

PUEBLO LIQUOR & BEER LICENSING BOARD
MINUTES -- REGULAR MEETING
CITY HALL -- COUNCIL CHAMBERS
February 15, 2012 – 6:00 P.M.

The Pueblo Liquor & Beer Licensing Board convened the Regular Meeting of February 15, 2012 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 Greg Styduhar and Deputy City Clerk Lori Bravo-Neff.

APPROVAL OF MINUTES

Mr. Pullaro, seconded by Mr. Ferris, moved to approve the minutes of the Regular Meeting of February 1, 2012. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

AMENDMENT TO CONSENT AGENDA

Mr. Pullaro, seconded by Mr. Ferris, moved to remove Item #6, (Special Events Permit Application for the HARP Foundation) and continue it to March 7, 2012. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

CONSENT AGENDA

- 1 HOTEL & RESTAURANT LIQUOR LICENSE APPLICATION-RENEWAL-RT DENVER FRANCHISE, LP D/B/A RUBY TUESDAY, 4150 N. FREEWAY**
- 2 TAVERN LIQUOR LICENSE APPLICATIONS-RENEWALS-TOTAL OF 4 APPLICATIONS**
Ruth Fern Fransua d/b/a Al's Ninety Six, 2100 E. 4th Street
Capritta's, Inc. d/b/a Capritta's Oasis, 1501 E. Evans Avenue
Edward P. Sena d/b/a Sena's Buffalo Bar, 414 W. Northern Avenue
Parise's Restaurant & Lounge, Inc. d/b/a Parise's Lounge, 430 W. 30th Street
- 3 3.2% BEER LICENSE APPLICATIONS-RENEWALS-CONSUMPTION OFF-PREMISES-TOTAL OF 2 APPLICATIONS**
Love's Travel Stops & Country Stores, LLC d/b/a Love's Travel Stop #226, 6470 N. Elizabeth Street
M&M Food Stores, Inc. d/b/a M&M Food Store, 1301 S. Pueblo Boulevard
- 4 RETAIL LIQUOR STORE LIQUOR LICENSE APPLICATION-RENEWAL-LAST STOP LIQUORS, INC. D/B/A LAST STOP LIQUORS, 609 W. 29TH STREET**
- 5 CABARET LICENSE APPLICATION-RENEWAL – RUTH FERN FRANSUA D/B/A AL'S NINETY SIX, 2100 E. 4TH STREET**
- 6 REMOVED FROM AGENDA**

VOTE ON CONSENT AGENDA ITEMS:

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

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7 PERMIT APPLICATION AND REPORT OF CHANGES-MANAGER'S REGISTRATION – HOTEL & RESTAURANT LIQUOR LICENSE-NEW VISION HOSPITALITY, LLC D/B/A CLARION HOTEL, 4001 N. ELIZABETH, (NEW MANAGER DENNIS PATRICK REPLACES TAVES MACIEL)

New manager Dennis Patrick, 4001 N. Elizabeth Street, was sworn in and answered questions from the Board. Mr. Patrick explained he was charged with theft in 2001 in New Jersey and received community service and probation, which he has long since completed. Mr. Patrick stated during his time as manager of this establishment, the liquor license has never been suspended, revoked or otherwise reprimanded for violating any liquor licensing statutes or regulations. They employ 40 employees and they do employ individuals from a "half-way house", however, these individuals do not serve alcohol. They do not conduct background checks on potential employees but do check references. Mr. Patrick described approved forms of identification. He stated he and their employees will attend a Liquor Awareness class offered by the City/State and was given a copy of the 2012 class schedule.

Mr. Rose, seconded by Mr. Ferris, moved to approve this Change of Manager. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

8 HEARING: TRANSFER OF OWNERSHIP APPLICATION—RETAIL LIQUOR STORE LIQUOR LICENSE—RICHARD BASSI D/B/A NORTHSIDE LIQUOR, 3637 BALTIMORE (CURRENTLY LICENSED TO HAPPYTIME, INC. D/B/A LIQUOR TOWN, LICENSE EXPIRED JANUARY 16, 2012)

New owner/manager Richard Bassi, Florence, CO, was sworn in and answered questions from the Board. The moral character of Mr. Bassi was satisfactory to the Board. Mr. Bassi has never held or worked in or for a liquor-licensed establishment. There are no silent partners or financial backers not disclosed in his application. He will employ 3 employees but as of this time, he has not hired them yet. Mr. Bassi will conduct background checks on potential employees. He described approved forms of identification and stated his policy for checking the age of his patrons, will be to ask for identification if the customer appears to be 30 years of age or younger. He also stated at the point of sale, the cashier will be prompted to ask for an I.D. and the I.D. is then scanned. Mr. Bassi stated he and his employees will attend a Liquor Awareness class offered by the City/State and was given a copy of the 2012 class schedule.

Mr. DiFatta, seconded by Mr. Rose, moved to approve this transfer of ownership. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

9 HEARING RE: ALLEGED LIQUOR CODE VIOLATION-TAVERN LIQUOR LICENSE-PEACHEE-LEWIS, INC. D/B/A LAKEVIEW BAR, 2330 LAKE AVENUE (POLICE CR#11-18563, VIOLATION DATE: SEPTEMBER 22, 2011)

Carol Johnston, owner of the Lakeview Bar, 2408 Poplar was present.

Assistant City Attorney Carla Sikes, entered her appearance on behalf of the Police Department as Conflicts Counsel. Ms. Sikes called Officer Barbara Dyleski to give testimony.

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Officer Barbara Dyleski, 200 S. Main Street was sworn in and was questioned by Ms. Sikes regarding the events that had taken place at this establishment at approximately 11:50 p.m. on September 22nd, 2011. Officer Dyleski acknowledged that the police report she had written, CR#11-18563 and referred to as *Exhibit 1* by Ms. Sikes was an accurate depiction of what had occurred. Officer Dyleski explained she was dispatched to the establishment in reference to a theft and the reporting party, Adalina Padilla, reported her purse and cell phone had been stolen while she was at the Lakeview Bar. Officer Dyleski stated through the course of her investigation Ms. Padilla told her she was only 20 years old and she had been served 3 or 4 Bud Light beers on this night. Additionally, according to Ms. Padilla, this was not the first time she had been served in the establishment and no one had ever asked her for identification. Officer Dyleski stated when she spoke to Lori Espinoza, an employee of the establishment, Ms. Espinoza told her she assumed Guy Cassavant, the employee on-duty before she arrived, had checked Ms. Padilla's identification as she and others with Ms. Padilla were drinking when she arrived at work. Ms. Espinoza also told Officer Dyleski that she had previously seen Ms. Padilla in the bar drinking about three other times.

Ms. Johnston asked Officer Dyleski why no one ever came back for the security video, and Officer Dyleski stated she had never said that she was going to. She also explained that she had not written citations on this night, but did write a police report. There were no further questions for the officer at this time.

Ms. Sikes called Adalina Padilla to give testimony.

Adalina Padilla, 1316 Lakeview, was sworn in and was questioned by Ms. Sikes. Ms. Padilla stated she is familiar with the Lakeview Bar; that she was in the establishment on the night in question; named the individuals she was with and that she and the individuals she was with, were actually seated at the bar and not at a table. Ms. Padilla stated she believed Ms. Johnston had served her and was later served by a younger female employee. Ms. Padilla stated at no time was she ever asked for identification; she did have her I.D. with her; and that she had just ordered and paid for her approximately 3-4 Bud Light beers. Ms. Padilla stated she was 20 years old on this particular night and she had been in the establishment three different times and had consumed alcohol all three times.

Ms. Padilla did acknowledge for Ms. Johnston that she had taken her to show her the security video and was able to determine who it was that had stolen her purse. Ms. Sikes had no additional witnesses at this time and there were no further questions for Ms. Padilla at this time.

Owner Carol Johnston called her witnesses, asking employee Barbara Hart to give testimony.

Employee Barbara Hart, 2509 Denver, was sworn in and answered Ms. Johnston's questions. Ms. Hart acknowledged working at the Lakeview and stated she has carded Ms. Padilla in the past.

Ms. Sikes asked Ms. Hart if she worked on 9/22/11, and Ms. Hart stated she did not work on this night. Board members briefly questioned Ms. Hart and Ms. Hart stated on a previous date (not 9/22/11) she had checked Ms. Padilla's identification. She also explained that Ms. Padilla is not a "regular" and had only seen her one other time. There were no further questions for Ms. Hart at this time.

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Employee Vicky DeHerrera, 1215 Elm Street was sworn in and answered Ms. Johnston's questions. Ms. DeHerrera stated she had checked Ms. Padilla's identification before and once she checks the customer's identification, she doesn't I.D. them again. Ms. Sikes asked Ms. DeHerrera if she had been at work on 9/22/11, and Ms. DeHerrera stated she did not work on this night. There were no further questions for Ms. Herrera at this time.

Employee Guy Cassavant, 3511 Devonshire, was sworn in and answered Ms. Johnston's questions. Mr. Cassavant stated he does work at the Lakeview Bar; that he did work on 9/22/11; that Ms. Padilla had indicated a theft had occurred; that he was relieved by bartender/employee Lori Espinoza and he had seen Ms. Johnston check Ms. Padilla's identification. Ms. Sikes had no questions for Mr. Cassavant. Board members briefly questioned Mr. Cassavant. Mr. Cassavant stated he requests identification from anyone who looks under the age of 30; that he will ask for identification more than once if he doesn't recognize or remember a patron; that he did recognize Ms. Padilla from coming into the bar before; and that he remembered seeing Ms. Johnston check Ms. Padilla's I.D. There were no further questions for Mr. Cassavant at this time.

Employee Lori Espinoza, 3005 Vinewood, was sworn in and answered Ms. Johnston's questions. Ms. Espinoza stated she does work at the Lakeview Bar; she did work on 9/22/11 and her shift began at 7:00 p.m.; that she heard about the incident with Ms. Padilla and that she had seen employee Vicky DeHerrera I.D. Ms. Padilla in the past.

Ms. Sikes asked Ms. Espinoza what the policy of the bar is with regard to checking I.D.'s and Ms. Espinoza stated if they recognize a customer, they do not ask for identification; that the officer had asked her about the security video and she had told the officer that she didn't know how to operate the equipment; the officer did mention that a violation had occurred. Board members briefly questioned Ms. Espinoza and Ms. Espinoza stated she relieved Mr. Cassavant at 7:00 p.m.; that Mr. Cassavant told her about Ms. Padilla's cell phone theft; that Ms. Padilla left at approximately 8:30 p.m.; that she had seen Ms. Padilla drinking water and that had served Ms. Padilla water. There were no further questions for Ms. Espinoza at this time.

Justin Espinoza, 1620 Palmer was sworn in and answered Ms. Johnston's questions. Mr. Espinoza stated he is a customer at the Lakeview Bar and that he has seen Ms. Johnston and other employees I.D. Ms. Padilla. He stated he was not at the bar on 9/22/11. There were no further questions for Mr. Espinoza at this time.

At this time, Board members recalled Officer Dyleski for brief questioning. They then recalled Ms. Padilla for points of clarification. Ms. Padilla again stated she had gone to the Lakeview Bar a number of times and no one had ever asked her for identification; in fact, she was with friends who were older than her and they had been asked for identification, but she had never been asked to show an I.D. Ms. Padilla then showed her I.D. to the Board and the Board observed the "under 21" notation on it. She further stated she did have two I.D.'s – one is cracked and then the one she had to get to replace the cracked I.D. She had to present her birth certificate and her social security card to obtain the replacement I.D. Ms. Padilla stated she knew drinking in the establishment was wrong but she was never asked to show her I.D. Ms. Sikes asked Ms. Padilla if she had used anyone else's identification or presented a fake I.D. and Ms. Padilla stated she had never used one.

Owner/manager Carol Johnston, 2408 Poplar was sworn in and gave her testimony. Ms. Johnston stated she has checked Ms. Padilla's identification and after they I.D. someone one time, they don't normally ask for their identification again. Ms. Johnston stated they will check identification if it is

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someone they don't know or don't recognize; they do check I.D.'s and feels they acted properly. Ms. Johnston stated in the 7 years she has held the license, they have had very few problems and they run a quiet bar.

Ms. Sikes asked Ms. Johnston if she or anyone had asked for an I.D. from Ms. Padilla on 9/22/11 and Ms. Johnston stated, "No." Ms. Johnston stated Ms. Padilla did consume alcohol on this night but that she had checked Ms. Padilla's I.D. once before and two other bartenders had as well. There were no further questions for Ms. Johnston at this time.

There were no further witnesses to question. Ms. Sikes made closing statements to the Board. She stated the issue at hand was whether or not this young woman was served and by the evidence given, it was apparent that she had been. Ms. Sikes explained this is a violation of 12-47-901 and that ignorance is not a defense and the licensee did not use care and diligence. Ms. Sikes stated the City was requesting a 10-day suspension for the violation with all days served.

Mr. Styduhar briefly explained to the Board that the Order to Show Cause gives the elements of the offense the licensee is alleged to have violated and also reviewed the affirmative defense of Section 12-47-901(5)(a)(I) for them regarding fraudulent proof of age. Ms. Sikes stated affirmative defense doesn't apply as Ms. Padilla was never asked for an I.D. on 9/22/11.

Mr. DiFatta, seconded by Mr. Rose, there was a violation. Roll Call: Ayes—DiFatta, Harrison, Pullaro and Rose. Nays: Ferris. Motion passes on a vote of 4-1.

The Board voiced their concerns to the licensee about the fact that they were not diligently checking I.D.'s and cautioned the licensee about this. Mr. Ferris wondered if Ms. Padilla was driven by any motivation with regard to her purse being stolen and felt the establishment should get some consideration for their efforts.

Mr. Ferris, seconded by Mr. Rose, moved for 3-days suspension: 1 day active, 2 days held in abeyance for 1 year. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

Mr. Ferris advised the licensee since they had not had a violation in 2 years, they were eligible to pay a fine.

Mr. Styduhar read the proposed Findings and Order for the Board's consideration.

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

ADJOURN – With no further business to come before the Board, the meeting was adjourned at 8:05 p.m.

Respectfully submitted,


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