

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

The Pueblo Liquor & Beer Licensing Board convened the Regular Meeting of June 6, 2012 at 6:00 p.m., with Chairwoman Doris Harrison presiding.

ROLL CALL

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

APPROVAL OF MINUTES

Mr. Ferris, seconded by Mr. Rose, moved to approve the minutes of the Regular Meeting of May 16, 2012. Roll Call: Ayes—Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

AMENDMENTS TO CONSENT AGENDA

Mr. Ferris, seconded by Mr. Rose, moved to amend the Consent Agenda by removing the items regarding *La Palma Nightclub* from Item #2 and Item #5 and continue these renewals to a future date pending the outcome of the Board's action on the communication from the Police Department. Roll Call: Ayes—Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

CONSENT AGENDA

- 1 HOTEL & RESTAURANT LIQUOR LICENSE APPLICATIONS-RENEWALS – TOTAL OF 3 APPLICATIONS**
J.M.A. Nacho's, Inc. d/b/a Nacho's Restaurant, 409 N. Santa Fe Avenue
J.M.A. Nacho's, Inc. d/b/a Nacho's Restaurant @ Elmwood, 3406 Thatcher Avenue
Patti's, Inc. d/b/a Patti's Restaurant & Flamingo Lounge, 241 S. Santa Fe Avenue
- 2 REMOVED FROM AGENDA**
- 3 3.2% BEER LICENSE APPLICATIONS-RENEWAL-CONSUMPTION OFF-PREMISES- WAL-MART STORES, INC. D/B/A WAL-MART SUPERCENTER #842, 4200 DILLON DRIVE**
- 4 RETAIL LIQUOR STORE LIQUOR LICENSE APPLICATION-RENEWAL – HANARI, INC. D/B/A TREASURE ISLAND LIQUOR, 1210 S. PRAIRIE AVENUE**
- 5 CABARET LICENSE APPLICATION-RENEWAL-TOTAL OF 1 APPLICATION**
PF&R Corporation d/b/a Patsy's, 425 S. Santa Fe Avenue
- 6 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR LICENSE–THE BISHOP OF PUEBLO, A CORPORATION SOLE D/B/A ST. FRANCIS XAVIER CHURCH, MAILING ADDRESS: 1725 SPRUCE STREET, EVENT MANAGER: PATRICIA J. MUNIZ, (EVENTS TO BE HELD JULY 27TH-29TH, 2012. ADDRESS OF EVENT: 1725 SPRUCE STREET)**
- 7 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR LICENSE–THE STATE HISTORICAL SOCIETY OF COLORADO D/B/A EL PUEBLO HISTORY MUSEUM, MAILING ADDRESS: 301 N. UNION AVENUE, EVENT MANAGER: DEBORAH ESPINOSA, (EVENT TO BE HELD JUNE 15TH, 2012. ADDRESS OF EVENT: 301 N. UNION AVENUE)**

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- 8 TEMPORARY PERMIT APPLICATION: TRANSFER OF OWNERSHIP APPLICATION—TAVERN LIQUOR LICENSE/CABARET LICENSE—DE BG, INC. D/B/A THE SPOTLIGHT, 211 W. NORTHERN AVENUE (CURRENTLY LICENSED TO CAVEMAN'S MAIN EVENT, INC. D/B/A ONE EYED JACK'S SALOON, LICENSE EXPIRED MAY 15, 2012)
- 9 PERMIT APPLICATION AND REPORT OF CHANGES-REQUEST TO CHANGE TRADE NAME-3.2% BEER LICENSE: WAL-MART STORES, INC. D/B/A WAL-MART SUPERCENTER #842, 4200 DILLON DRIVE (NEW TRADE NAME: WALMART #842)

VOTE ON CONSENT AGENDA ITEMS:

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

REGULAR AGENDA

- 10 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR LICENSE—ROSEMOUNT MUSEUM, MAILING ADDRESS: 419 W. 14TH STREET, EVENT MANAGER: JACKIE BOTTINI, (EVENT TO BE HELD AUGUST 24TH, 2012. ADDRESS OF EVENT: 419 W. 14TH STREET)

Event Manager Jackie Bottini, 1474 Lane 32 was sworn in and answered questions from the Board. *Note: Sandra Stein, 109 Cornell Circle was also sworn in and was present to assist Ms. Bottini with Mr. Pullaro's line of questions regarding the history of the event and the museum.* Ms. Bottini explained the event for which this application was made is for the 2012 Stomp-On and the money raised will be used to fund the museum. She will be responsible for supervising the event along with 2 other individuals. There will be 4 liquor distribution points and two shifts with up to 14 individuals selling/serving alcohol. Ms. Bottini described the type of food that will be served and described approved forms of I.D. She explained at the point of entry, a patron will be required to show identification as no one under the age of 21 will be allowed to attend the event. Anyone who wants to purchase alcohol will also need to show I.D. at the time they purchase the necessary tickets to obtain alcohol. Ms. Bottini stated TNT Security has been hired to maintain order on the licensed premises. Alcohol will not be allowed to be taken off the licensed premises and orange snow fence will be erected to keep the premises secure.

Mr. Pullaro, seconded by Mr. Ferris, moved to approve this application for a Special Events Permit. Roll Call: Ayes—Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

- 11 PERMIT APPLICATION AND REPORT OF CHANGES-CHANGE OF MANAGER – HOTEL & RESTAURANT LIQUOR LICENSE-CARINO'S ITALIAN KITCHEN, INC. D/B/A JOHNNY CARINO'S ITALIAN, 5700 N. ELIZABETH STREET (NEW MANAGER JAMES ROBINSON REPLACES STEFANIE SELLERS)

New manager James Robinson, 2622 Hatch Circle, Colorado Springs, CO, was sworn in and answered questions from the Board.

The moral character of Mr. Robinson was satisfactory to the Board. Mr. Robinson previously worked in a liquor-licensed establishment and that license never received a violation or reprimand for violating liquor licensing statutes or regulations. Mr. Robinson stated they employ approximately 60-70

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employees and none of these employees have a criminal history. Mr. Robinson explained they check references of potential employees and conduct background investigations on employees who will be employed in a managerial capacity. Mr. Robinson described approved forms of identification and stated their company policy for checking the age of their patrons is to ask for identification if the patron appears to be 30 years of age or younger. Mr. Robinson stated their employees are required to complete in-house Liquor Awareness training and managers must attend Serve-Safe courses.

Mr. Rose, seconded by Mr. Ferris, moved to approve this manager registration. Roll Call: Ayes—Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

12 HEARING RE: ALLEGED LIQUOR CODE VIOLATION-HOTEL & RESTAURANT LIQUOR LICENSE-RESTAURANT FIFTEEN TWENTYONE, LLC D/B/A RESTAURANT FIFTEEN TWENTYONE, 123 N. MAIN STREET (LICENSEE IS CURRENTLY DELINQUENT WITH FILING SALES & USE TAX RETURNS FOR NOVEMBER 2011 THROUGH FEBRUARY 2012 AND HAS A HISTORY OF UNTIMELY AND DELINQUENT FILING OF SALES AND USE TAX RETURNS INCLUDING BUT NOT LIMITED TO JANUARY 2011 THROUGH OCTOBER 2011)

City Sales Tax Audit Manager Valerie Palumbo was sworn in. Present on behalf of the Sales Tax Division was Assistant City Attorney Carla Sikes. Ms. Sikes requested the following items be submitted into the record and distributed copies to the Board:

- Exhibit A – Communication from Valerie A. Palumbo to the Board
- Exhibit B – Return and payment information for Restaurant Fifteen Twentyone prepared by Valerie Palumbo
- Exhibit C – Notice of Failure to File
- Exhibit D – Notice of Underpayment
- Exhibit E – Statement for Account
- Exhibit F – E-mail from Valerie Palumbo to Nancy Nguyen re: acceptance of proposal to pay
- Exhibit G – Licensee's liquor license history

Ms. Palumbo was then questioned by Ms. Sikes. Ms. Palumbo explained she supervises the operations of the Sales Tax Division. She stated the collection of sales tax is a trust tax and when a business owner comes in to apply for a sales tax license, there is a fiduciary duty to collect the tax on behalf of the City. They must then remit that money to the City. Ms. Palumbo reviewed the payment due dates for remitting sales tax. Ms. Palumbo reviewed the contents of Exhibits A-F. Ms. Palumbo stated that Ms. Nguyen has a long history of not filing tax returns at all, filing them late and also for not paying her taxes. Regarding *Exhibit C*, Ms. Palumbo stated they did not receive any response from Ms. Nguyen when the *Notice of Failure to File* was mailed to her. Regarding *Exhibit D*, Ms. Palumbo explained when a taxpayer files a return, but does not remit the tax with the return; a Notice of Underpayment is generated and mailed to the taxpayer the day after they receive the return. In this Exhibit D, the notice sent to Restaurant Fifteen Twentyone indicates that from November 2011 through March 2012, there was a substantial amount owed in unpaid taxes to the City of Pueblo. Ms. Palumbo stated that from the time the *Order to Show Cause* notice went out in early May 2012 until the hearing date (June 6th, 2012), the taxpayer did not contact the Sales Tax Division; however, Ms. Palumbo did contact them. Ms. Palumbo stated she spoke to and e-mailed Ms. Nguyen on May 9th about an agreed upon payment proposal (Exhibit F) and stated to date, Ms. Nguyen has not adhered to the payment plan nor paid anything towards her outstanding balance; she has not called nor has she come in. Ms. Palumbo stated that even though she has an e-mail address for Ms. Nguyen, actually getting a response from Ms. Nguyen has been difficult. She further explained to the Board, that other retailers

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have stated they are experiencing difficulties in these economic times; however, the tax they collect is collected on behalf of the City and should not affect their bottom-line.

Re: *Exhibit E*- Statement for Account, Ms. Palumbo stated this document was prepared for Ms. Nguyen at Ms. Nguyen's request and is not something that is routinely generated. The exhibit shows the balance owed by Restaurant Fifteen Twentyone.

Ms. Sikes explained *Exhibit G* is the history of the licensee for their liquor license. Ms. Sikes moved to admit Exhibits A-G and the record will reflect the Board has admitted those exhibits. Ms. Nguyen acknowledged that she also received a copy of these exhibits.

Ms. Nguyen did not have any questions for Ms. Palumbo.

Nancy Nguyen, owner of Restaurant Fifteen Twentyone, 2644 Gore Road was sworn in. Ms. Nguyen presented a copy of a business statement from her bank, a document entitled "Capital for Merchants Advances Detail," an exchange of e-mails between Ms. Nguyen and a senior account representative for *Capital for Merchants*. These documents were collectively marked as Exhibit 1.

At this point in the hearing, the Board took a short recess at 6:55 p.m. so that copies of Ms. Nguyen's documents could be copied for the Board.

The Board reconvened at 7:05 p.m.

Ms. Nguyen briefly reviewed the contents of her exhibit. Referring to the 2nd page of her bank statement, Ms. Nguyen explained that she paid an amount over \$2,400 in December 2011 which brought her current on her taxes at that point in time. Next she referred to the 3rd page of her documents and stated she currently owes over \$22,000 to *Capital for Merchants* and when she pays that account down to \$19,000, she will be able to obtain another advance and will be able to pay her taxes. Ms. Nguyen then referred to the e-mail correspondence with the account representative who explains in paying her account down, she will be able to renew her advance. The Board briefly questioned Ms. Nguyen regarding the amount of debt she owes; about not remitting the tax money she has collected on behalf of the City and what her payment priorities are. Ms. Nguyen also stated that when she first started out in business, she was not sure of the process she needed to follow, to pay her taxes. Ms. Nguyen stated she has been waiting for an insurance check reimbursing them for a two week period of time when they had to be closed. She also stated she has a couple of events scheduled which will also help her financially.

Ms. Sikes questioned Ms. Nguyen. Ms. Sikes referred her to *Exhibit B* which indicates that when she first started out in business in 2008 to a period in 2009, her sales tax returns were timely filed and paid. Ms. Sikes asked Ms. Nguyen if she had a savings account or an account where she held the money in trust for the City of Pueblo and asked Ms. Nguyen is she was aware that the "trust tax" belongs to the City and Ms. Nguyen stated she did know that. There were no further questions for Ms. Nguyen by Ms. Sikes or the Board.

Ms. Nguyen was given an opportunity to call her witnesses.

Sandra Stein, previously sworn in, was present to speak on behalf of Ms. Nguyen. Mrs. Stein stated she feels that the owners of Restaurant Fifteen Twentyone are very good people and feels badly they are financially strapped. She further stated they have been very generous and have helped her out with

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various fundraisers and they always extend themselves to the community. Mrs. Stein stated she is involved with *The Women's Foundation* and they have an event scheduled at Restaurant Fifteen Twentyone on June 24th and the event is nearly sold out. Ms. Sikes did not have any questions for Mrs. Stein.

Board Member Pullaro asked Mr. Styduhar to explain what the Board's options are with regard to sanctions. Mr. Styduhar explained that once it has been determined that a violation has occurred, the Board could consider: a suspension of up to 6-months, revocation of the license or continuing the matter for a certain period of time and on return of that time, considering a sanction. If there has been a remedy of the active violation, the Board could consider that as a mitigating circumstance.

Ms. Sikes made her closing statements and asked the Board to consider a complete revocation due to the fact that Ms. Nguyen has never followed through on any payment plans that have been set up for her; that there has been a complete violation of trust by Ms. Nguyen's repeated failure to file or pay her taxes; and stated in December 2011, she continued to sell alcohol even though she had not filed her liquor license renewal and that she has a history of disregarding the rules and regulations.

Ms. Nguyen explained there was a period of time when she sold alcohol after the license expiration date and the time that it was renewed but that she did not know she could not serve alcohol during that time. She further stated, if her license is revoked, she will have to close her business. She again stated when her loan goes through; she will be able to pay everything off.

With no further testimony to be given, Chairwoman Harrison declared the hearing closed.

Mr. Ferris, seconded by Mr. Rose, moved a violation occurred. Roll Call: Ayes—Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

Re: the Sanction:

Mr. Ferris, seconded by Mr. Pullaro, moved to continue this matter to July 5th to allow the licensee to have the June 24th event, to give her until then to pay her taxes and to determine a sanction on the 5th.

The Board held a brief discussion explaining to Ms. Nguyen that this is a serious situation and that she has a legal obligation to remit City and State taxes. The Board then cast their votes.

Roll Call: Ayes—Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

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

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

ADJOURN – With no further business to come before the Board, the meeting was adjourned at 7:58 p.m.

Respectfully submitted,


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