

PUEBLO LIQUOR & BEER LICENSING BOARD
MINUTES -- REGULAR MEETING
CITY HALL -- COUNCIL CHAMBERS
JULY 5, 2012 – 6:00 P.M.

The Pueblo Liquor & Beer Licensing Board convened the Regular Meeting of July 5, 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. DiFatta, seconded by Mr. Ferris, moved to approve the minutes of the Regular Meeting of June 6th, 2012. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

CONSENT AGENDA

- 1 HOTEL & RESTAURANT LIQUOR LICENSE APPLICATION-RENEWAL –PINELLE’S BOWLERO LANES, INC. D/B/A PINELLE’S BOWLERO LANES, 1000 W. 6TH STREET**
- 2 TAVERN LIQUOR LICENSE APPLICATIONS-RENEWALS –TOTAL OF 2 APPLICATIONS**
Waterfront on the Riverwalk, LLC d/b/a Waterfront on the Riverwalk, 101 S. Main Street #400
Polito, Inc. d/b/a Beer Barrel, 2113 E. Evans Avenue
- 3 3.2% BEER LICENSE APPLICATIONS-RENEWALS-CONSUMPTION OFF-PREMISES-TOTAL OF 2 APPLICATIONS**
Albertson’s LLC d/b/a Albertson’s #816, 1601 Hwy 50 West
Albertson’s LLC d/b/a Albertson’s #1837, 1545 S. Prairie Avenue
- 4 CABARET LICENSE APPLICATIONS-RENEWALS-TOTAL OF 2 APPLICATIONS**
Waterfront on the Riverwalk, LLC d/b/a Waterfront on the Riverwalk, 101 S. Main Street #400
T&D Enterprises, Inc. d/b/a Park East Restaurant, 720 Goodnight Avenue
- 5 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR LICENSE–PUEBLO CHAMBER OF COMMERCE, MAILING ADDRESS: 302 N. SANTA FE AVENUE, EVENT MANAGER: ROD SLYHOFF, (EVENT TO BE HELD JULY 17TH, 2012. ADDRESS OF EVENT: BETWEEN GRAND & RICHMOND AND ALLEY TO CENTRAL MAIN – NEAR VETERAN’S BRIDGE)**
- 6 TEMPORARY PERMIT APPLICATION: TRANSFER OF OWNERSHIP APPLICATION—TAVERN LIQUOR LICENSE–WALTER A. APODACA D/B/A VETERAN’S TAVERN, 315 E. NORTHERN AVENUE (CURRENTLY LICENSED TO MARIA P. KREISER D/B/A VETERAN’S TAVERN, LICENSE EXPIRES JANUARY 11, 2013)**

VOTE ON CONSENT AGENDA ITEMS:

Mr. Pullaro, 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

7 NEIGHBORHOOD SURVEY: NEW TAVERN LIQUOR LICENSE/NEW CABARET LICENSE—THE SICILIAN OF PUEBLO, LLC D/B/A THE SICILIAN, 115 E. RIVERWALK #100

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 tavern liquor license for premises to be known as *The Sicilian*. Mr. Vest explained this was the location of the former Muggsy's.

Mr. DiFatta, seconded by Mr. Rose, moved to accept the survey and set the hearing for July 18, 2012. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

8 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR LICENSE-BESSEMER HISTORICAL SOCIETY, INC. D/B/A STEELWORKS MUSEUM, MAILING ADDRESS: 215 CANAL STREET, EVENT MANAGER: CORINNE KOEHLER, (EVENT TO BE HELD AUGUST 4TH, 2012. ADDRESS OF EVENT: 215 CANAL STREET

Event manager Corinne Koehler, 403 Argyle was sworn in and answered questions from the Board. *Note: Julie Rodriguez, 14 Slayton Court was present with Ms. Koehler and was also sworn in.* Ms. Koehler explained the event for which this application was made is for the Steel "Ebration" celebrating 140 years of CF&I. The money raised will be used for operation of the museum. Ms. Koehler stated she and Ms. Rodriguez will be responsible for supervising the event. There will be 2 liquor distribution points and 4 individuals will be selling/serving alcohol. Ms. Koehler described the type of food that will be served and described approved forms of I.D. She explained staff and security will check identification at the point of entry and if a patron is 21 years old, they will be given a wristband which indicates that they are of proper age to purchase/consume alcohol. Ms. Koehler stated they intend to hire the same security company as "Biker Bash" did. Alcohol will not be allowed to be taken off the licensed premises and orange snow fence will be erected to keep the premises secure.

A brief discussion was held with regard to where the applicant was purchasing their alcohol and it was determined they were purchasing it from an authorized source.

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

9 PERMIT APPLICATION & REPORT OF CHANGES- MODIFICATION OF PREMISES—HOTEL & RESTAURANT LIQUOR LICENSE- BIG DADDY'S SUNSET BOWL, INC. D/B/A BIG DADDY'S SUNSET BOWL, 1227 S. PRAIRIE AVENUE

William Ben Gradishar, 152 Bridle Trail was sworn in and explained the proposed modification of premises he was applying for. Mr. Gradishar stated they were constantly monitoring their customers who smoke to make sure they do not remove alcohol from the licensed premises so they decided to add a patio. The premises will be enclosed by a 4½' tall, steel-tubing with mesh fence. The dimensions of the patio are approximately 21' x 14'. The Board cautioned Mr. Gradishar to be very vigilant to ensure that his customers do not leave the patio area with alcohol. Mr. Gradishar stated they will also be installing security cameras similar to what they use at his other establishment.

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

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- 10 HEARING: TRANSFER OF OWNERSHIP APPLICATION—TAVERN LIQUOR LICENSE— DE BG, INC. D/B/A THE SPOTLIGHT, 211 W. NORTHERN AVENUE (CURRENTLY LICENSED TO CAVE MAN'S MAIN EVENT INC. D/B/A ONE EYED JACK'S SALOON, LICENSE EXPIRED MAY 15, 2012)**

New owner, Daryl Espinoza, 1215 Taylor Lane was sworn in and answered questions from the Board. Mr. Espinoza stated he took over operation of this establishment in May 2012. He stated he has worked at several liquor-licensed establishments and at least one of these establishments did receive a suspension for violating the liquor code. The moral character of Mr. Espinoza was satisfactory to the Board. There are no silent partners or financial backers not disclosed in this application. Mr. Espinoza explained he paid \$10,000 down payment and borrowed the funds to enter into possession of the premises. He stated he has 12 years to repay the debt. With respect to any officers with 10% or more interest, none have pled guilty to or been convicted of a crime other than a minor traffic offense. Mr. Espinoza stated he currently employs 5 employees – all of which are family members and to his knowledge, they do not have a criminal background. Mr. Espinoza described approved forms of identification. He stated they check everyone's ID and if the customer is not 21 years old, they are not allowed in the establishment. Mr. Espinoza was given a copy of the 2012 Liquor Awareness Class schedule and the Board strongly encouraged him to become certified. Food will be available.

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

- 11 HEARING: TRANSFER OF OWNERSHIP APPLICATION—CABARET LICENSE—DE BG, INC. D/B/A THE SPOTLIGHT, 211 W. NORTHERN AVENUE (CURRENTLY LICENSED TO CAVE MAN'S MAIN EVENT INC. D/B/A ONE EYED JACK'S SALOON, LICENSE EXPIRED JUNE 19, 2012)**

Mr. Espinoza, still under oath, was present.

Chairwoman Harrison stated the Board would take Administrative Notice of the testimony given in Item #10.

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

- 12 COMMUNICATION FROM VALERIE A. PALUMBO, CITY OF PUEBLO SALES TAX AUDIT MANAGER RE: ALLEGED LIQUOR CODE VIOLATION-TAVERN LIQUOR LICENSE-GINO'S LOUNGE, LLC D/B/A MARGUERITE'S AT TOG'S, 112 W. 7TH STREET (LICENSEE IS CURRENTLY DELINQUENT WITH RESPECT TO FILING SALES & USE TAX RETURNS FOR NOVEMBER 2011 THROUGH APRIL 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 WHICH WERE ALL FILED ON DECEMBER 2ND, 2011)**

Assistant City Attorney and Conflicts Counsel, Carla Sikes was present on behalf of the City. Ms. Sikes explained that the licensee was out-of-town and requested a continuance to August 1st, 2012.

Mr. Rose, seconded by Mr. Ferris, moved to continue this item to August 1st, 2012. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

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13 COMMUNICATION FROM LUIS VELEZ, CHIEF OF POLICE RE: ALLEGED LIQUOR CODE VIOLATION-TAVERN LIQUOR LICENSE-CAVEMAN'S MAIN EVENT, INC. D/B/A ONE EYED JACK'S SALOON, 211 W. NORTHERN AVENUE (THIS LICENSE WAS TRANSFERRED TO APPLICANT DE BG, INC. D/B/A THE SPOTLIGHT)

New owner, Daryl Espinoza, previously sworn, was present on behalf of this matter.

Board Member DiFatta briefly explained there were a couple of discrepancies that needed to be addressed. First, was the name of the licensee (given in the police communication) which should be changed to DE BG, Inc. d/b/a The Spotlight; secondly, the municipal code cited in the communication letter should have been 11-3-23 and not 11-3-21.

Chairwoman Harrison asked Mr. Espinoza if he had received a copy of the communication and Mr. Espinoza acknowledged receipt of the communication. Chairwoman Harrison explained to Mr. Espinoza it is up to the Board to determine whether or not there is probable cause that a violation occurred and whether they would proceed to a hearing with this matter.

Mr. DiFatta, seconded by Mr. Rose, moved there is probable cause that a violation occurred. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

Mr. Espinoza stated he did not want to stipulate to a violation. A hearing date was set for August 15th, 2012.

14 HEARING RE: SANCTIONS FOR 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) CONTINUED FROM JUNE 6, 2012 TO ALLOW LICENSEE ADDITIONAL TIME TO GET CURRENT WITH PAYMENT OF TAXES

Owner, Nancy Nguyen, 2644 Gore Road was sworn in.

Assistant City Attorney and Conflicts Counsel, Carla Sikes was present on behalf of the City Sales & Use Tax Division. Ms. Sikes gave a brief summary of events from the June 6th meeting regarding this licensee. Ms. Sikes stated at that meeting she asked the Board to consider revoking the licensee's liquor license however, the Board opted to give Ms. Nguyen until this meeting to get current with her delinquent sales tax returns. On June 28th, Ms. Sikes stated Ms. Nguyen wrote a check for \$5,000 for payment of her November-December 2011 and January-March 2012 sales tax returns; Ms. Nguyen also filed and paid her April and May 2012 taxes. Ms. Sikes cautioned the Board saying Ms. Nguyen has a history of NSF checks and stated it will be several weeks before the City knows for sure that the check has cleared. Ms. Sikes also stated to the Board that even though Ms. Nguyen has gotten current on her taxes, it does not negate the fact that she was actively delinquent for this long period of time and in testimony given by Ms. Nguyen, Ms. Nguyen stated she knew the money collected in sales and use tax did not belong to Restaurant Fifteen Twentyone, and rather than hold it in trust or pay it to the City, she used it to pay her own operating expenses. Ms. Sikes then asked the Board to consider a 10-day suspension, held in abeyance conditioned upon no further late filings of returns and all taxes are timely filed and remitted when due otherwise the 10-days will be imposed. Ms. Sikes reminded the Board

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about the case law she cited at the June 6th meeting (Colorado Supreme court case: Mr. Lucky's, Inc. vs. Dolan) and how in comparison to that case, the facts of this case are even more egregious because these aren't corporate income taxes that aren't being paid, it is sales and use tax which is supposed to be held in trust for the City.

The Board held a brief discussion and wanted to know what their options are if Ms. Nguyen's \$5000 check were to come back due to insufficient funds. Mr. Styduhar explained if the Board issued their order at this meeting; it would be a potential violation of that order as well demonstrating an active violation because there would still be unpaid taxes. Additionally, the Board could receive this violation in a communication or could summarily suspend this liquor license. The Board gave Ms. Nguyen an opportunity to speak with regard to sanctions.

Ms. Nguyen explained that when she first started out in business, she began with a lot of debt. She explained that at the times when she was able to obtain a loan, she would try to remit payment for her taxes to get caught up. She stated she is finally current with the City and she would consider paying her taxes with a money order or cashiers' check.

Ms. Sikes also asked the Board to summarily impose the 10-days suspension if there is a violation should Ms. Nguyen's funds be insufficient to avoid the process of holding a hearing which takes up a lot of time and resources.

Board member Ferris asked the Board for a 5-minute recess. Mr. Styduhar stated, just for clarification, the recess was not being taken for deliberation, but to allow the Board to consider their thoughts as well as to formulate a motion. The Board recessed at 7:06 p.m.

The Board reconvened at 7:14 p.m.

Mr. Ferris moved for 15-days suspension, with 15-days held in abeyance for 1 year.

Mr. DiFatta asked Mr. Ferris if he intended his motion to include summarily suspending the license. Following a brief discussion and due to a lack of a second on this motion, the motion failed.

Mr. Ferris stated he would like to rephrase his motion.

Mr. Ferris, seconded by Mr. DiFatta, moved for 15-days suspension, with all 15-days held in abeyance with the understanding the suspension would summarily take effect if a future violation occurs.

The Board held a brief discussion voicing concerns with regard to the licensee's repeated disregard for the law, the significance of summarily suspending the liquor license and how "outrageous" the actions of this licensee have been. Ms. Harrison stated she feels that the licensee ought to, at a minimum, serve at least one day of the suspension and that Ms. Nguyen needs to comply with the rules of all departments. The Board then cast their votes.

Roll Call: Ayes—DiFatta, Ferris, Pullaro and Rose. Nays: Harrison. Motion passes on a vote of 4-1.

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

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

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ADJOURN – With no further business to come before the Board, the meeting was adjourned at 7:38 p.m.

Respectfully submitted,


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