

PUEBLO LIQUOR & BEER LICENSING BOARD
MINUTES -- REGULAR MEETING
CITY HALL -- COUNCIL CHAMBERS
May 1, 2013 – 6:00 P.M.

The Pueblo Liquor & Beer Licensing Board convened the Regular Meeting of May 1, 2013 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. Rose, moved to approve the minutes of the Regular Meeting of April 17th, 2013. Roll Call: Ayes— DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

AMENDMENTS TO CONSENT AGENDA

Mr. Rose, seconded by Mr. Ferris, moved to amend the Consent Agenda by adding Item #9A: Modification of Premises: Tavern Liquor License-3 Below, LLC d/b/a 3 Below, 224 S. Union Avenue. Roll Call: Ayes— DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

CONSENT AGENDA

- 1 HOTEL & RESTAURANT LIQUOR LICENSE APPLICATIONS-RENEWALS- TOTAL OF 3 RENEWALS**
VZ2, LLC d/b/a Toni & Joe's Pizzeria, 106 Colorado Avenue
Showtime Entertainment & Dining Complex, Inc. d/b/a Showtime Entertainment & Dining Complex, 1007 W. 6th Street
Brooklyn Pueblo Corp. d/b/a Manhattan's Pizza Parlor & More, 1110 Hwy 50 West
- 2 TAVERN LIQUOR LICENSE APPLICATIONS-RENEWALS-TOTAL OF 3 RENEWALS**
PF&R Corporation d/b/a Patsy's, 425 S. Santa Fe Avenue
Wrong Note Ltd. d/b/a The Downtown Bar, 103 Central Plaza
FRS, Inc. d/b/a The Hangar, 100 W. 23rd Street
- 3 3.2% BEER LICENSE APPLICATIONS- CONSUMPTION OFF-PREMISES-RENEWAL-M&M FOOD STORES, INC. D/B/A M&M FOOD STORES, 1004 W. 29TH STREET**
- 4 RETAIL LIQUOR STORE LIQUOR LICENSE APPLICATION-RENEWAL-REGENCY LIQUOR, INC. D/B/A REGENCY LIQUOR, 25 RED CREEK SPRINGS ROAD**
- 5 CABARET LICENSE APPLICATION-RENEWAL- SHOWTIME ENTERTAINMENT & DINING COMPLEX, INC. D/B/A SHOWTIME ENTERTAINMENT & DINING COMPLEX, 1007 W. 6TH STREET**
- 6 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR- BANDIT SPORTS, INC., MAILING ADDRESS: 1311 PALMER AVENUE, EVENT MANAGER: JOSEPH C. SANTOS, (EVENTS TO BE HELD MAY 24TH-27TH, 2013. ADDRESS OF EVENT: 800 W. NORTHERN AVENUE-JOE SANTOS FIELD AT BESSEMER PARK)**
- 7 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR LICENSE- BESSEMER HISTORICAL SOCIETY, INC. D/B/A STEELWORKS MUSEUM AND CF&I ARCHIVES, MAILING ADDRESS: 215 CANAL STREET, EVENT MANAGER: CORINNE KOEHLER, (EVENT TO BE HELD AUGUST 3, 2013. ADDRESS OF EVENT: 215 CANAL STREET)**

CONSENT AGENDA (CONTINUED)

**MEETING
NUMBER**

- 8 TEMPORARY PERMIT APPLICATION: TRANSFER OF OWNERSHIP—3.2% BEER LICENSE-CONSUMPTION OFF-PREMISES: PESTER MARKETING COMPANY D/B/A ALTA CONVENIENCE #6256, 300 W. NORTHERN AVENUE, (CURRENTLY LICENSED TO BLACK DIAMOND PETROLEUM, INC. D/B/A KONVENIENCE KORNER, LICENSE EXPIRES MAY 4, 2013)
- 9 TEMPORARY PERMIT APPLICATION: TRANSFER OF OWNERSHIP—HOTEL & RESTAURANT LIQUOR LICENSE: EL ALAMO, LLC D/B/A 1305 E. ROUTT AVENUE, (CURRENTLY LICENSED TO MI PUEBLITO MEXICAN GRILL, INC. D/B/A MI PUEBLITO, LICENSE EXPIRES MAY 18, 2013)
- 9A PERMIT APPLICATION & REPORT OF CHANGES – MODIFICATION OF PREMISES – TAVERN LIQUOR LICENSE- 3 BELOW, LLC D/B/A 3 BELOW, 224 S. UNION AVENUE

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

REGULAR AGENDA

- 10 SPECIAL EVENTS PERMIT APPLICATION-BEER, WINE & SPIRITUOUS LIQUOR– THE BISHOP OF PUEBLO, A CORPORATION SOLE D/B/A ST. FRANCIS XAVIER CHURCH, MAILING ADDRESS: 611 LOGAN AVENUE, EVENT MANAGER: VICTOR FARIAS, (EVENTS TO BE HELD MAY 31ST–JUNE 2, 2013. ADDRESS OF EVENT: 1725 SPRUCE STREET) CONTINUED FROM APRIL 17TH, 2013 DUE TO THE ABSENCE OF THE APPLICANT

Event Manager Victor Farias, 430 W. Grant Avenue was sworn in and answered questions from the Board. Mr. Farias explained the event for which this application was made is for their annual church festival. The funds raised at this event will be used to off-set some of the operating expenses of the church. Mr. Farias will be responsible for supervising the event. There will be 1 liquor distribution point and 12-20 individuals will be selling/serving alcohol. Mr. Farias described the types of food that will be served and described approved forms of I.D. He explained at the point of entry, they will be checking ID's and a wristband will be given to patrons so there is a distinction of who can purchase alcohol. Titan Security will be hired to maintain order on the licensed premises. Alcohol will not be allowed to be taken off the licensed premises and the entire facility will be enclosed by snow-fencing so the licensed premises will be secure. Mr. Farias stated they will also have their own people walking around the grounds to ensure everything is monitored closely.

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

- 11 PERMIT APPLICATION & REPORT OF CHANGES- MODIFICATION OF PREMISES— TAVERN LIQUOR LICENSE- RIVERWALK RESTAURANT & LOUNGE, LLC D/BA RIVERWALK RESTAURANT & LOUNGE, 219 S. GRAND AVENUE

Owner Paul Montez, 19 Barrington Court was sworn in and described the proposed (temporary) modification of premises to the Board. Mr. Montez will be adding a temporary outdoor patio area for the Wild Wild Fest. Mr. Montez stated snow fence will be used to contain this area. The Board told Mr. Montez he would need to list a description on his application to designate the area he wants to modify. Mr. Montez added the description to the application.

REGULAR AGENDA (CONTINUED)

**MEETING
NUMBER**

Mr. Ferris, seconded by Mr. DiFatta, moved to approve the modification of premises contingent upon the State's approval and the licensee obtaining a revocable permit from the City. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

**12 HEARING: NEW TAVERN LIQUOR LICENSE– GLOBAL SPECTRUM, L.P. D/B/A
MEMORIAL HALL THEATER, #1 CITY HALL PLACE**

Assistant General Manager & Director of Operations Brock Neely, 124 W. Adams Avenue, Director of Food & Beverage Eric Copeland, 3101 Tucci and General Manager Brian Hoffman, 1 Mendecino Drive, were sworn in and answered questions from the Board. Since Mr. Neely will be the registered manager at this location, the moral character questions were directed towards him. The moral character of Mr. Neely was satisfactory to the Board. Mr. Neely has worked in other liquor-licensed establishments and those licenses were never suspended, revoked or otherwise reprimanded for violating any liquor licensing statute or regulation. They will employ 30-40 employees and Mr. Neely stated that some of these employees may have pled guilty to or been convicted of a crime other than a minor traffic offense. They will conduct background investigations on potential employees. Mr. Neely described approved forms of identification and explained their policy for checking the age of patrons is that every person purchasing alcohol will be asked for I.D.; additionally, security will also check. Mr. Neely stated they have already attended a City/State liquor awareness class.

For the record, it was determined there was no one present in opposition to this transfer of ownership.

The Board then reviewed the petitions which were previously distributed to the Board. Mr. Styduhar stated the circulated petitions will be entered into the record and marked the petitions as follows: Residential petitions-*Exhibit A*; Business petitions-*Exhibit B*; Activity log kept by applicant-*Exhibit C*.

The Board held a discussion with Mr. Hoffman and Mr. Neely regarding clarification of the licensed premises as well as control of the licensed premises. A review of each floor to be licensed was discussed and following the review, Mr. Neely stated he would supply the City Clerk's Office with a revised drawing of the two floors the Board expressed concern with. Mr. Copeland described the types of food that will be served which he stated will change depending on the type of event that is being held.

Mr. Rose, seconded by Mr. Ferris, moved to approve this application for a tavern liquor license contingent upon receipt of the Routing Sheet. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

Mr. Styduhar read the proposed Findings and Order for the Board's consideration. The findings reflect that issuance of this license is supported by at least 152 residents of the neighborhood or other parties in interest and is opposed by at least 1 resident of the neighborhood or other parties in interest.

Mr. Rose, 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.

REGULAR AGENDA (CONTINUED)

MEETING
NUMBER

13 HEARING: RE ALLEGED LIQUOR CODE VIOLATION AND TEMPORARY SUSPENSION AS SET FORTH IN FINDINGS, ORDER AND NOTICE OF HEARING DATED APRIL 17, 2013-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 THE PERIODS AS OUTLINED IN THE COMMUNICATION DATED MARCH 27TH, 2013

Owner Marguerite Crowell-Even, 25750 Hillside Road and her daughter, Melissa Crowell-Even, 942 Climax Lane were sworn in.

Mr. Styduhar explained that the licensee previously received an Order to Show Cause based upon the Board's previous findings of probable cause supporting the allegations. The licensee is here for a hearing based on those allegations as set forth by the City.

Ms. Crowell-Even stated, for the record, that she was sick on April 17th and that is why she was not present. She also explained that her daughter was supposed to attend this meeting in her absence and she has been closed under the Board's summary suspension for almost 15 days.

Conflicts Counsel Carla Sikes was present on behalf of the City Sales Tax Office. Ms. Sikes called her first witness, Valerie Palumbo to give testimony.

Sales Tax Audit Manager Valerie Palumbo, 25999 Overton Road, was sworn in and answered questions from Ms. Sikes. Ms. Sikes distributed 4 exhibits to the Board and Ms. Crowell-Even. The exhibits were previously marked by Ms. Sikes. Ms. Sikes then proceeded with questioning Ms. Palumbo. Ms. Palumbo explained that in her position of Tax Audit manager, part of her responsibilities include tracking tax returns filed and amounts paid as well as overseeing the sending out of delinquency notices. Ms. Palumbo explained that *sales tax* is the tax charged to a customer when they purchase tangible personal property that is deemed to be subject to tax by ordinance. The retailer has a fiduciary responsibility to collect the tax, maintain it, and remit it to the City as deemed necessary by the filing frequency. *Use tax* means the tax paid or required to be paid by a person for using, storing, or consuming tangible personal property or taxable services inside the City and is also filed and remitted to the City as deemed necessary by the filing frequency. Both moneys are the property of the City and should not be included with the retailers' operating expenses. Ms. Palumbo also explained the schedule of filing frequency; stated the payment of the taxes is due at the time the return is filed; stated that Ms. Crowell-Even is on a monthly return status and payments are due at the time the return is filed. Ms. Sikes reviewed each of the exhibits with Ms. Palumbo who verified and explained in detail what was contained in each exhibit. The exhibits are as follows: *Exhibit 1*: Communication of Complaint from Valerie A. Palumbo, Tax Audit Manager – dated March 27, 2013 for failure to file and pay sales and use tax; *Exhibit 2*: (5) "Failure to File" Delinquency Notices to the Licensee (dated: December 14, 2012, January 14th-April 14th, 2013); *Exhibit 3*: "Return Information" which indicates that from January 2011 through September 2012, there were only 3 times when the licensee filed a return on time; *Exhibit 4*: Activity Log which provides an audit trail of what documents are processed for each specific account. Ms. Sikes asked for each of the exhibits to be made a part of the record. So moved by Chairwoman Harrison. Ms. Palumbo stated that Ms. Crowell-Even did come in earlier in the day to file & pay her taxes as well as her licensing fee. Ms. Palumbo stated that it is considered a new violation for each day a taxpayer is delinquent. She also explained the manner in which penalties and interest are charged when taxes remain unpaid.

REGULAR AGENDA (CONTINUED)

**MEETING
NUMBER**

Ms. Palumbo acknowledged the fact that she had filed a complaint earlier this year against this licensee for the tax return periods of October-December, 2012; she also acknowledged that there was a stipulation reached for this complaint resulting in the licensee's liquor license being suspended for 3-days. Ms. Sikes asked Ms. Palumbo whether or not the licensee ever came in to file or pay those taxes after the stipulated agreement was entered into prior to today and Ms. Palumbo replied, "No." Ms. Palumbo acknowledged that based on the City of Pueblo Municipal Code's *Title XIV (Taxes and Finance)* there was a continuing violation for each day those taxes remain unpaid. Ms. Palumbo acknowledged that the licensee did not timely renew her business license for 2013 which expired 12/31/2012; that Ms. Crowell-Even did pay the fee to renew her business license today which meant that from January 2013 thru today, the licensee was operating her business without a business license. During the course of questioning, Ms. Sikes asked Ms. Palumbo how many written complaints she has brought before the Board against this licensee for failure to pay sales & use tax and Ms. Palumbo stated a total of three complaints have been filed on the delinquencies which have resulted in hearings before this Board. Ms. Palumbo explained in June 2012, the Board issued a suspension of 3-days with the 3-days being held in abeyance and two complaints have been filed in 2013. Ms. Palumbo stated she has held face-to-face discussions, telephone discussions and e-mails with Ms. Crowell-Even regarding the nature of sales tax explaining that the taxes should be held in a separate account and that she has a responsibility to collect the taxes, hold it for the City and to remit it to avoid actions such as this hearing. Ms. Sikes had no further questions of Ms. Palumbo.

Mr. Styduhar explained to the Board, before allowing the licensee an opportunity to either cross-examine or provide evidence, he wanted to point out to them that there have been previous stipulations entered into and essentially, those cases were adjudicated. He stated what that meant is that the Board cannot reconsider those adjudications; however, in a situation where it is alleged that a subsequent non-filing of a tax return for a month that was involved in the prior stipulation, a new violation could be considered. He further stated he wanted to make it clear that the Board's concern be with the violations as set forth in the Order to Show Cause primarily the January 2013 & February 2013 violations. Mr. Styduhar also stated the Board should also be concerned with the alleged violations set forth in the Order to Show Cause regarding the October 2012 – December 2012 violations inasmuch as there were any delinquencies after the second stipulation. Ms. Sikes stated it is the City's position that the second allegation of their complaint, is that the licensee has a history of untimely and delinquent filing of sales and use tax returns and the Board could consider another violation considering the licensee's overall history.

At this time, Ms. Crowell-Even was given an opportunity to cross-examine the witness. She stated she had no questions for the witness. Ms. Sikes stated she had no further witnesses.

A brief discussion regarding the amount of taxes owed/paid by the licensee was held which for a 6-month period amounted to \$414.66.

Ms. Crowell-Even then addressed the Board. She explained to the Board that all taxes and fees are up-to-date; she stated she has had health-issues and on-going problems in her personal life that have contributed to her becoming delinquent with her taxes. She stated her business has been struggling since 2011. Ms. Crowell-Even asked the Board to consider the time served of 14-days summary suspension be taken into consideration as her sanction for these violations. Ms. Crowell-Even stated when she gets her tax refund within the next two weeks, she is going to use it to buy inventory, catch up on bills, over-pay on utilities and go forward. She stated her customers are very loyal – appealing to a 35 & over crowd; that there are never any fights or gang-activity at her establishment.

REGULAR AGENDA (CONTINUED)

**MEETING
NUMBER**

Mr. Styduhar reminded the Board that the first phase of this hearing is consideration of the violation. If the Board finds that a violation has occurred as set forth in the Order to Show Cause, then the Board should consider the sanction next.

Ms. Sikes asked Ms. Crowell-Even if she was admitting to the violations and Ms. Crowell-Even stated she was. She also acknowledged that she has received “some” of the delinquency notices citing problems with the mail delivery. Ms. Sikes asked Ms. Crowell-Even if she remembered that on September 5th, 2012, she entered into a stipulation where she admitted to having a history of untimely and delinquent filing of sales and use tax returns from January 2011 thru 2012. Ms. Crowell-Even stated she had no violations in 2011 only in 2012 and 2013. Ms. Sikes asked the Board to take notice of the stipulation entered on September 5th, 2012 which doesn’t get entered until the licensee comes before the Board. Ms. Sikes asked Ms. Crowell-Even if she understands that sales & use tax belongs to the City and that those funds should not be included with her operating expenses or used to pay any of her operating expenses and Ms. Crowell-Even stated she did understand this. Ms. Crowell-Even also acknowledged that the reason she has not been able to pay her sales & use tax is because she used these funds to pay for her electric bill. Ms. Sikes questioned Ms. Crowell-Even about the number of employees she has, the amount of money spent on rent, alcohol and food, the events she holds at her establishment such as pool and dart leagues. Ms. Crowell-Even explained that when she holds some of these events, the customers don’t even drink and they use her establishment because it is convenient and they are also there to socialize. Ms. Crowell-Even agreed that she pays about \$65.00 per month in taxes and gross sales are at about \$2,000 per month.

Mr. Styduhar asked the licensee is she was stipulating or agreeing that a violation did occur as set forth in the Order to Show Cause. After further discussion, Ms. Crowell-Even replied she did agree that there was a violation. Mr. Styduhar explained to the Board since the licensee has stipulated to the violation, that it would be appropriate to consider whatever sanction they deemed necessary after hearing from Conflicts Counsel and the licensee.

Ms. Sikes gave her closing statements and cited from Section 12-47-307 which addresses *Persons prohibited as licensees*. She also referred to a portion of Regulation 47-310E(4) which addresses *Application-General Provisions*. Ms. Sikes cited other instances of case-law and concluded by stating the City’s position is that the licensee has a total disrespect for the Board and the law, that she has no faith that the licensee will file/pay her taxes and the licensee does not do so unless she is under some compulsion to pay them either because her liquor license is due to be renewed or because she has been brought before the Board and is threatened with a potential sanction. Ms. Sikes reminded the Board that Ms. Crowell-Even told the Board the last time she was before them that she would pay the taxes she owed which she did not do until today. For all the reasons outlined in her closing statement, Ms. Sikes requested revocation of the licensee’s liquor license. Ms. Sikes further stated if the Board considers suspension, then she would like them to compel the licensee to present her books for purposes of an audit pursuant to C.R.S. 12-47-701 and Regulation 47-700.

Ms. Crowell-Even was then given an opportunity to speak. She stated there are some days when they only take in \$19.00 per day. Then, due to the emotional state of Ms. Crowell-Even, the Board took a short recess at 8:00 p.m. The Board reconvened at 8:08 p.m.

Ms. Crowell-Even continued by stating that her husband and son-in-law have given her plenty of money to try to help her stay open. She stated not paying her taxes was her fault opting instead to pay her electric bill to avoid being shut off. Ms. Crowell-Even asked the Board if they were taking revocation into consideration, she wanted to ask for another hearing so that she can come back with her attorney

REGULAR AGENDA (CONTINUED)

**MEETING
NUMBER**

and so that she has an opportunity to sell her bar so she can transfer the liquor license to someone who isn't a family member.

Board member DiFatta stated to Ms. Crowell-Even that she seemed to be under the notion that she did not have a violation in 2011 because she did not serve a suspension. He further explained to her that they issued her a 3-day suspension which was held in abeyance which meant that she did have a violation but basically, the Board gave her a break by holding the suspension in abeyance. Mr. DiFatta told Ms. Crowell-Even that it did not seem that things seemed important to her until a suspension was imposed. Mr. DiFatta then made the following motion:

Mr. DiFatta, seconded by Mr. Rose, moved for 45-days suspension with credit for time served of 14-days and the remaining 31-days be held in abeyance for 1 year; also to turn books over to the City for a full audit. The Board then held a discussion.

Mr. DiFatta stated he is very uncomfortable putting someone out of business but feels they have bent over backwards, time and again, for this licensee. He stated to Ms. Crowell-Even that she needs to take responsibility and to make sure that she does not co-mingle her taxes with her expenses. Mr. Rose stated he agreed with Mr. DiFatta and reminded the licensee that the tax money she collects is not hers and that it belongs to the City. He also stated he understands business is tough. Mr. Ferris told the licensee that it is her duty to collect the tax, keep it in a separate account and remit those taxes to the City. Mr. Pullaro stated to the licensee that she has a fiduciary responsibility to pay her taxes and that it is not the proprietor's money. Ms. Harrison stated to Ms. Crowell-Even that she has exhibited a total disregard for the law and feels the Board is giving her a huge break. The Board then cast their vote on the sanction.

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

Ms. Sikes stated as defined by State statute, she was requesting that the licensee submit her books to the City for the past three years for an audit.

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

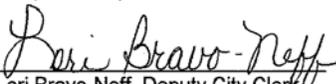
Mr. DiFatta, seconded by Mr. Ferris, moved to accept the findings and order as read. Roll Call: Ayes—DiFatta, Ferris, Harrison, Pullaro and Rose. Motion carried unanimously.

**14 PETITION TO PAY FINE IN LIEU OF SUSPENSION – EASTSIDE WINE & LIQUOR, INC.
D/B/A EASTSIDE WINE & LIQUOR, 723 E. 4TH STREET (LICENSEE PETITIONING TO PAY
FINE IN LIEU OF 2-DAYS SUSPENSION)**

Mr. Pullaro, seconded by Mr. DiFatta, moved to accept the fine in lieu of suspension. 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 8:30 p.m.

Respectfully submitted,


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