LIQUOR AND BEER MEETING
LOCAL LICENSING AUTHORITY
CITY OF GRAND JUNCTION, COLORADO
MUNICIPAL HEARING ROOM, CITY HALL, 250 NORTH 5TH STREET

SPECIAL HEARING MINUTES
WEDNESDAY, NOVEMBER 5, 2014, 8:00 A.M.

HEARING OFFICER MICHAEL GRATTAN

I. CALL TO ORDER

The Hearing was called to order at 8:01 a.m. Those present were Hearing Officer Mike Grattan, City Attorney John Shaver, and Deputy City Clerk Debbie Kemp.

II. SHOW CAUSE HEARING/REVIEW AND AUTHORIZE STIPULATION, AGREEMENT AND ORDER

1. MZ Entertainment, LLC dba Thunderstruck Valley, 436 Main Street, Grand Junction, CO 81501, Temporary Tavern License

    1) It is alleged that on July 26, 2014 on or about 1:09 a. m., the Licensee, by and through its local owner/manager, Mark Towner, permitted the removal of alcohol (specifically a Whiskey and Coke mixed drink) from the licensed premises by customer Jesse Youngs (DOB 04/06/1991). The Licensee has a temporary tavern license which only allows consumption of alcohol on the licensed premises. Mr. Youngs was contacted walking in the area near 609 Main Street which is outside the licensed premises.

    2) It is alleged that on August 10, 2014 about 1:05 a.m. the Licensee, by and through its local agent Gabriel Cohen, knowingly engaged in an act of disorderly conduct (fights with another in a public place). Mr. Cohen was observed by witnesses punching, kicking, and kneeing Trevor Thompson, a customer of the establishment and such witnesses reported to the Grand Junction Police Department that the conduct was offensive and unnecessary.

    3) Alleged Violations Concerning the Ownership of Thunderstruck

    4) Conversion of Thunderstruck's Temporary License into a Permanent License

    Stating their appearance were DeLayne Merritt, City Staff Attorney, and Tom Volkmann, Counsel on behalf of MZ Entertainment, the Licensee.

Hearing Officer Grattan read Regulation 47-600 (C) from the Colorado Liquor Rules which addressed the procedure in which the hearing should be conducted.

Mr. Volkmann asked if items 3 and 4 from the agenda could be addressed prior to items 1 and 2. Hearing Officer Grattan agreed that would be fine. Staff Attorney Merritt also concurred.

Mr. Volkmann provided a document signed by Mr. Towner confirming the ownership of MX Entertainment, LLC is 50% owned by Mark Towner and 50% owned by Zhanna S. Shearwood. Ms. Merritt advised that she is comfortable with the document which showed there was no change of ownership throughout the duration of the license. City Attorney Shaver asked Ms. Kemp if she has other records that would be inconsistent with the information provided on the document. Ms. Kemp said the document is consistent with the records that are on file. Hearing Officer Grattan entered the document into the record as Exhibit A (attached) and accepted the document as a true statement of the ownership which is compliant with application on file.

Mr. Volkmann stated that the ownership status was the outstanding item preventing the issuance of the permanent liquor license and asked that the permanent liquor license be issued. Ms. Merritt advised that the City is not objecting to or contesting the issuance of the permanent liquor license. Hearing Officer Grattan said he is not against the issuance but will make the determination later.

Ms. Merritt advised that the City is not intending to prosecute the July 26, 2014 leaving the premises with an open container violation. Mr. Volkmann asked for that item to be dismissed. Hearing Officer Grattan dismissed the July 26th charge.

Hearing Officer Grattan read the alleged violation from the agenda on August 10, 2014 and asked Ms. Merritt if that is the only remaining item. Ms. Merritt confirmed it is the only item and advised that she issued subpoenas for that matter and asked that Meghan Woodland, Grand Junction Police Service Technician be released from the subpoena, asked that Grand Junction Police Officer David Keech be designated as her advisory witness, and also requested that witnesses be sequestered. Mr. Volkmann had no objection to the requests. Hearing Office Grattan released Ms. Woodland from the subpoena, approved Officer Keech as Ms. Merritt's advisory witness, and approved the witnesses being sequestered.

All members of the audience who would be testifying were asked to leave the room.

Ms. Merritt gave her opening statement stating that testimony will be provided by four lay witnesses (independent citizens) regarding the acts that happened on August 10th at the business Thunderstruck Valley. The information will prove

that Mr. Cohen's behavior was unacceptable, not decent, orderly, or respectable, and it was offensive to average citizens.

Mr. Volkmann stated that the evidence will be seen quite differently. Mr. Cohen will testify that he was not the aggressor. Mr. Cohen works for Strategic Alliance, a third party security company that the licensee has engaged. Originally they only provided security for the exterior of the business, but then also started providing security for interior and exterior of the business. The evidence will show that Mr. Cohen was in a self-defense situation. The evidence will not support that the licensee knowingly permitted the disorderly conduct.

Ms. Merritt called her first witness, Trevor Thompson, 1245 Holm Avenue, Silt, CO 81652, who was sworn in by Hearing Officer Grattan.

Mr. Thompson testified that he arrived at Thunderstruck Valley with a group of three or four friends, male and female (he provided names), on August 10, 2014 around 9:30 p.m. to 10:00 p.m. and he left the establishment around 11:30 p.m. to 12:00 a.m. While he was there, he talked to the General Manager (who he did not see in the room during his testimony) of Thunderstruck Valley and also to the security working that evening to find out why his friend (Keaton) was kicked out of the establishment just because he was dancing with a girl over by the bar. When he asked the security, the security jumped off of the stage and got within a couple of feet of Mr. Thompson's face. When Mr. Thompson put his hands up with palms out, the security officer (Gabriel) turned him around and put him in handcuffs. After being handcuffed, he was face down on his belly on the stage and was asking the security to be cool but more than one security personnel kept striking Mr. Thompson in the face, side of the head, and his torso. He was bleeding from the mouth, had bruises up and down the arms, scratches on the face, and a black eye. Mr. Thompson never touched Gabriel, he remained still and asked Gabriel to please stop. Mr. Thompson had a couple of beers while he was at Thunderstruck Valley. It was the security officers and no one else that caused all of the injuries. While waiting for the ambulance to show up, he told law enforcement everything that had happened. Mr. Thompson went back to Thunderstruck Valley the next day to get back his watch that was taken off when he was handcuffed and earrings that were ripped out during the process. When Ms. Merritt asked Mr. Thompson if he felt his conversation with Mr. Gabriel Cohen was handled appropriately, Mr. Thompson said no. Mr. Thompson testified that there were tables close to where he was pushed down on the stage, but did not recall if there were any people at those tables. Mr. Thompson said that he had never been to Thunderstruck Valley before. The music was not loud and he did not have to yell when he spoke to Mr. Cohen.

Mr. Volkmann asked Mr. Thompson where he and his friends were prior to going to Thunderstruck Valley and had they been drinking. Mr. Thompson stated they were at his house and had not been drinking prior to going to Thunderstruck Valley. Mr. Volkmann asked Mr. Thompson who he spoke with when he went back the next day and did he get back his watch and earrings.

Mr. Thompson said he did not know who he spoke with and he did not get his watch and earrings back. Mr. Volkmann asked if he believes that his stud earrings came out during the physical interaction with Mr. Cohen. Mr. Thompson said yes. Mr. Thompson testified that at no time did Mr. Cohen ask him to leave Thunderstruck Valley, Mr. Cohen just physically took him out. Mr. Thompson said he remembers Mr. Cohen using profanity but couldn't remember if it was used to tell him to leave or to get out of his face. Mr. Volkmann asked about Mr. Thompson's friend that was near him during the time of the altercation. Mr. Thompson stated that a lady moved him out of the way and he wasn't sure where he went. Mr. Volkmann asked Mr. Thompson if it is his testimony that he asked Mr. Cohen once about his friend Keaton and that Mr. Cohen threw him on the stage. Mr. Thompson said yes. Mr. Volkmann asked Mr. Thompson if it was true that as the EMT's were preparing to leave, he told Officer Keech that he wanted an ambulance to come and get him because he wanted to get Mr. Cohen in as much trouble as possible. Mr. Thompson said no, it was because he was bleeding from his face. Mr. Volkmann asked Mr. Thompson if he is a larger man than Mr. Cohen. Mr. Thompson said Mr. Cohen is pretty stocky. Mr. Volkmann advised that the police report indicated that Mr. Thompson is a couple of inches taller than Mr. Cohen. Mr. Thompson said he is six foot and weighs 200 pounds.

Ms. Merritt asked Mr. Thompson if he had earrings in both ears. Mr. Thompson said yes. He showed a pair of earrings that he had in his pocket that were very similar to the ones that were ripped out. He stated they are not real easy to take out but he had no injuries to his ears from them being ripped out. Ms. Merritt asked Mr. Thompson if his friend Keaton was kicked out by security or by management. Mr. Thompson said he was asked to leave by the general manager and there were no security officers near Keaton. Ms. Merritt asked Mr. Thompson if he has any special training which makes him stronger. Mr. Thompson said he has not. Ms. Merritt asked if Mr. Thompson would have been clear to understand Mr. Cohen asking him to leave, would he have left. Mr. Thompson said he would have because he didn't want any problems with Mr. Cohen.

Mr. Volkmann asked Mr. Thompson if Mr. Cohen had told him to get out. Mr. Thompson said he was not told to get out. Mr. Volkmann asked Mr. Thompson if it was his testimony that Mr. Cohen looked scary. Mr. Thompson replied affirmatively. Mr. Volkmann asked Mr. Thompson if he went across the room to approach Mr. Cohen. Mr. Thompson confirmed that to be true.

Hearing Officer Grattan asked that Mr. Cohen be brought into the room so that he could make a record of the size of Mr. Thompson and Mr. Cohen side-by-side. Hearing Officer Grattan found that Mr. Thompson is a little taller and Mr. Cohen is a little burlier. He noted that size wise, they are comparable. Mr. Cohen was asked to leave the Hearing Room again. Hearing Officer Grattan asked Mr. Thompson if the encounter with Mr. Cohen took place on the street level of the establishment. Mr. Thompson said yes. Hearing Officer Grattan asked Mr. Thompson if he asked the manager for clarification as to why his friend was asked to leave, and if so, what did the manager say. Mr. Thompson

said that he was told by the manager that his friend appeared to be too intoxicated and was dancing too close to the bar and looked too sloppy. Hearing Officer Grattan asked if Mr. Cohen had any role in asking Mr. Deere (Keaton) to leave. Mr. Thompson said no. Hearing Officer Grattan asked Mr. Thompson to describe the facility and how far the bar is from the stage and to describe where the altercation took place and asked Mr. Thompson's questions about the altercation to have a clear picture of each step of the altercation. Hearing Officer Grattan asked Mr. Thompson if he is sure that he was not hit before he was handcuffed. Mr. Thompson said that he does not remember being hit before he was handcuffed.

Ms. Merritt requested that Mr. Thompson not be released from his subpoena until the conclusion of the hearing. Hearing Officer Grattan agreed.

Hearing Officer Grattan reviewed the subpoena's that were issued by Ms. Merritt.

Ms. Merritt called her next witness, Guillermo Padilla, 276 S. Elm Street, Fruita, CO 81521, who was sworn in by Hearing Officer Grattan.

Mr. Padilla testified that he, his wife, his brother, his brother's girlfriend, and another friend went to Thunderstruck Valley after dinner on August 10, 2014 around 9:00 p.m. or 10:00 p.m. He was not drinking that evening because he was the designated driver. They were in the establishment about one hour or so before they witnessed a verbal altercation. They were at a table close to the bar and approximately five feet from the stage and Mr. Padilla was seated facing the stage. There was one security person (identified as security by the shirt he was wearing) leaning up against the wall by the stage. Mr. Padilla was not sure if there were any stairs as it was his first visit to Thunderstruck Valley and he was not familiar with the layout of the facility. Mr. Padilla described what he witnessed as two gentlemen (customer and bouncer/security) getting into an argument. He was unsure what the argument was about or how it got started. They both were raising their voices and about a foot from being face to face. He remembers hearing the bouncer repeatedly saying to the customer to be quiet and eventually witnessed the bouncer hit the customer in the face with a closed right fist. Mr. Padilla did not observe the customer striking the bouncer prior to the bouncer striking the customer. Mr. Padilla found it very surprising that the bouncer would strike the customer because a bouncer should be more professional especially since they have to deal with intoxicated people all the time. Mr. Padilla did not recall seeing the customer raise his hands in any fashion. Mr. Padilla said that after the customer was struck, he fell onto the stage and another bouncer came and jumped on the customer while the first bouncer tried to put handcuffs on him, all the while kicking him and kneeing him in the face. The customer was trying to wiggle and move but wasn't able to because the bouncer had his hands behind his back. The stage is approximately two feet high and the customer's body was mostly lying across the stage where he fell after being punched and pushed. His friend was standing by at first and all three people were arguing but then the friend left prior to the customer being hit. Mr. Padilla observed the bouncers walking the

customer outside to the officers after he was handcuffed. Mr. Padilla and his party remained at Thunderstruck Valley only about 10 more minutes after that because they were offended by what they had witnessed, they felt that the bouncer should have had more control. Mr. Padilla said that he spoke to two law enforcement officers for approximately 10 to 15 minutes before leaving because he wanted to express that the actions of the bouncer were uncalled for. Mr. Padilla advised that he had a clear view of the incident. There was a table to the left of him with no one sitting there and his wife was on his right hand side of him also facing the stage area.

Mr. Volkmann asked Mr. Padilla how far he was sitting from the security and from the bar. Mr. Padilla advised five feet or so for both, the security being in front of him and the bar being directly behind him.

Hearing Officer Grattan asked Ms. Kemp if she has a schematic of the establishment. Ms. Kemp provided him with one.

Hearing Officer Grattan called for a five minute break to get extra copies of the schematic made.

Hearing Officer Grattan reviewed the two page schematic and entered them in as Exhibit B (attached) and asked for an explanation. Mr. Volkmann advised that it is an accurate layout of the establishment. The first page is the first floor and the second page is the second floor. Hearing Officer Grattan said it appears that there are two stages. Mark Towner explained that there is only one stage, the other area is raised seating.

Mr. Volkmann asked Mr. Padilla to draw on Exhibit B a circle with a number one in it indicating where he was sitting on August 10th and to place a circle with a number two indicating where the two persons that were arguing were located. Mr. Padilla did so. Mr. Padilla testified that there was music playing, he did not recall seeing the customer approach the security person but he did hear the two persons arguing but could not hear every word. The incident occurred approximately 11:00 p.m. and lasted altogether approximately three minutes. Mr. Padilla was unaware if the customer had spoken to any other member of the staff prior to the security person. He did notice another person (assuming it was a friend) with the customer at first. He stated that he did observe both the customer and the security person he saw in the argument on August 10th outside the courtroom. He had not heard the security person tell the customer to leave the premises. Mr. Volkmann asked Mr. Padilla if he had ever been a bouncer. Mr. Padilla said no. Mr. Padilla has been in bars when fights broke out a couple of times. He has not been back to Thunderstruck Valley since August 10th.

Ms. Merritt asked Mr. Padilla if the three minutes he mentioned earlier for the incidents was for the argument as well as the physical altercation. Mr. Padilla said probably about five minutes for both. Ms. Merritt asked where the conversation and physical interaction happen. Mr. Padilla marked the area in question with a number three. Mr. Padilla said the customer was lying face

down on the stage and the kicks were being made towards his head which is what made Mr. Padilla very upset. Ms. Merritt asked if Mr. Padilla observed the customer to have any blood or bruising to his face when the customer was leaving the room. Mr. Padilla said yes, he remembers blood running down his face. Mr. Padilla advised that the customer did not have any injuries before he was struck by security. Ms. Merritt asked Mr. Padilla if the fights he has seen prior to this one included security and has he seen security using strikes or blows to patrons before. Mr. Padilla said no. Ms. Merritt asked if the second security officer delivered any strikes or blows to the patron or asked the first security officer to move away. Mr. Padilla said no but the second security guard gave the first one a look as if to say "what are you doing"? It was both the security officers that removed the customer and Mr. Padilla did not notice any managers. The second security guard was a black gentleman with facial hair. Mr. Padilla said that the first security person was frustrated with the customer and did get more boisterous than the customer.

Mr. Volkmann asked Mr. Padilla where the security guards were at. Mr. Padilla said they were on the stage. Mr. Volkmann asked how long it took to get the handcuffs on the customer. Mr. Padilla said a minute or so. Mr. Volkmann asked if the customer was struck or pushed before the handcuffs were put on him or after and when did the friend leave the area. Mr. Padilla said the customer was punched/pushed before the handcuffs and then the customer fell back onto the stage and the friend left the area prior to the punch.

Ms. Merritt asked where the first punch/push made contact with the customer and was it with a closed fist. Mr. Padilla said to his face, it was a closed fist and the punch/push occurred all in one motion and as he was falling he twisted around and ended up face down on the stage. Ms. Merritt asked if the customer was wiggling to get away from the cuffs or the blows. Mr. Padilla said both.

Mr. Volkmann asked if either of the security guards were wearing gloves. Mr. Padilla said he didn't recall.

Hearing Officer Grattan asked Mr. Padilla to explain the five minutes of the altercation. Mr. Padilla said the argument lasted about three minutes, and the bouncer hitting the customer and the customer falling on the stage and the handcuffing took approximately another two minutes. Hearing Officer Grattan asked what time the incident occurred. Mr. Padilla said he thinks it was around 11:00 p.m. but it could have been closer to 1:00 a.m. Hearing Officer Grattan asked for clarification on how the customer and the bouncer ended up on the stage. Mr. Padilla said after the punch/push, they both went down onto the stage and then the bouncer got back up and kicked the customer.

Ms. Merritt also asked that Mr. Padilla not be released from his subpoena. Hearing Officer Grattan agreed.

Ms. Merritt called her next witness, Margaret Padilla, 276 S. Elm Street, Fruita, CO 81521, who was sworn in by Hearing Officer Grattan.

Ms. Merritt asked Ms. Padilla how long she and her husband have been in a relationship. Ms. Padilla said that they will have been married for 10 years next June, together for 12 years. Ms. Padilla testified that they arrived at Thunderstruck Valley on August 10th sometime between 9:00 p.m. to 10:30 p.m. They sat at an empty table near the back bar by the stage. Ms. Padilla marked the table with a number one on Exhibit C (see attached). Ms. Padilla said she was facing the stage and her husband was on her left. Ms. Padilla said she did not have any drinks at Thunderstruck Valley. She was unaware of the conversation between a customer and the security until other security officers rushed to the stage and then she saw the security guard (Caucasian gentleman) punch the customer in the face and the customer was dropped to the ground, (she was unsure if the customer was pushed or fell from the punch) was kicked and kneed several times, and then was escorted out of the building. She and her party left about ten to fifteen minutes after that. She did not see the customer being argumentative, throwing punches, or being disruptive. She did see him cover his face after the punch was thrown. While the one security guard was kicking and kneeing the customer, two other security guards were trying to contain (hold him still) the customer. The customer was on the stage, approximately 1 ½ to 2 feet tall, and the security guard was half on and half off of the stage. She believes the customer fell to the stage on his side but she wasn't sure because her friend and her got up at that time and were ready to leave because when you reach a certain age in life, there is an environment one chooses to be in without drama or excessive language, and they found that was not the environment they wanted to be in. She was offended by the security guards behavior. She thought at first it was a nice place, but once the gentleman was punched in the face, she realized it is not a place she wants to be involved with. Ms. Padilla did observe the customer was bleeding from the nose when he was walked out of the building but didn't notice any other injuries. Ms. Padilla wasn't sure what time they left Thunderstruck Valley but thinks that they were there for a couple of hours. When they left the building, Ms. Padilla's husband went to the left to talk to a law enforcement officer and she and the lady with her walked to the right because that is where they were parked. Ms. Padilla did speak to law enforcement officers that were near where they parked because she felt it was her duty to advise them that she felt that the security guard was a bit excessive in his actions. Ms. Padilla said the whole incident happened in maybe five or ten minutes. She did not see a manager near the security guards. Ms. Padilla said it was the first time she had ever been to Thunderstruck Valley. Ms. Padilla said that it did not appear that the security guard was aiming at anyone except the customer and it did not appear accidental.

Mr. Volkmann asked Ms. Padilla to circle the table on Exhibit C and place an "a" where she was sitting and a "b" where her husband was sitting. Ms. Padilla did as requested. Ms. Padilla testified that they arrived Thunderstruck Valley between 9:00 p.m. and 10:30 p.m. and they may have been there three or four hours because, at first, they were having a really good time. During the time they were there, she had not seen anyone being kicked out of the establishment prior to the incident between the customer and the security

guard. Ms. Padilla had not seen the security guard prior to seeing him punch the customer. The security guards were identifiable because they all had on the same shirt with dark colored pants. Ms. Padilla said that the security guards she noticed rushing to the stage came from the right hand side in the direction of the front door. Ms. Padilla said that there was a table with no one sitting at it between their table and the altercation and estimated that the altercation took place seven to ten feet in front of them. She said that she did not see anyone (friends) with the customer when she saw the customer. Ms. Padilla said that they left the establishment prior to last call and there were some other people, unsure how many, that left at the same time they did.

Ms. Merritt asked Ms. Padilla if she was having conversation with her friends when the altercation happened. Ms. Padilla said she was turned to the right talking to her friend when the altercation started. Ms. Padilla said that she found the actions of the security guard offensive and that is why she and her friends (group of five) chose to leave as a group. Ms. Padilla said she did not recall that the security officer had any injuries or was wearing gloves.

Mr. Volkmann asked Ms. Padilla if she had any knowledge from her experience what prompted the security personnel to rush to the stage that evening. Ms. Padilla said no.

Hearing Officer Grattan asked if Ms. Padilla had noticed the security guard prior to the rushing. Ms. Padilla said that she only saw one security checking identification prior to the rushing. Hearing Officer Grattan asked Ms. Padilla to put a number three on the diagram indicating where the altercation took place, an arrow indicating the direction of the rushing. Hearing Officer Grattan also asked for clarification of how many security guards she saw as part of the altercation. Ms. Padilla said it was two or three.

Ms. Merritt also asked that Ms. Padilla not be released from her subpoena. Hearing Officer Grattan agreed.

Ms. Merritt called her next witness, Britt Kunz, 618 Monarch Way, Grand Junction, CO 81504, who was sworn in by Hearing Officer Grattan.

Ms. Merritt asked Mr. Kunz if he went to Thunderstruck Valley on the evening of August 10th. Mr. Kunz testified that he did, he went there after work around midnight from Naggy McGees with two (one male and one female) of his co-workers. He said that he was a server and had worked for Naggy McGees for two years When they got to Thunderstruck Valley, they went to the back bar by the kitchen. Mr. Kunz was handed a diagram marked as Exhibit D (attached) and was asked to place a number one where he and his co-workers were standing by the back bar. Mr. Kunz was going to have a drink but while waiting, he saw the fight and decided he would not have a drink. He does not like fights in bars. He had not had anything to drink that evening. He explained that when he first got to the back bar, he noticed a security officer and two customers talking and at first, it seemed pretty friendly, but after about six minutes, he heard raised voices and saw the security officer shove the first customer. The

security officer started screaming at a second customer who then left. The security officer walked back over to the first customer and raised his hand as if he was going to hit the customer. The customer cowered and leaned back on the stage and sat there with his hands up before getting up in a defensive manner. The security guard started hitting the customer with a closed fist to his head and chest probably two or three times and the customer fell back. The security officer then ran up on the stage and grabbed the customer by the head and tried to knee him in the front side of his face probably two or three times and then another security officer got there and held the customer down. Mr. Kunz was asked to place a number three on the diagram where the verbal altercation took place. He said that when the second security officer got to the altercation, he got on the customer and held him down until they were able to retain the customer and then they walked him out. Mr. Kunz said he was approximately 15 to 20 feet from the fight and there were two tall tables between them with people sitting at them but Mr. Kunz was still able to see what was going on. He did not see the customer show any aggression towards the security officer. Mr. Kunz demonstrated a motion with his hands indicating how the security officer shoved the customer away. Mr. Kunz described the security officer who was doing the striking as 5'8" to 5'9" tall, shaved head, neck tattoo, and a blue polo tee-shirt with a company name on it. He was sitting outside the courtroom during at that time. He had seen him before at Thunderstruck Valley. During the altercation, Mr. Kunz had not heard the security officer ask the customer to leave the establishment. After the altercation, Mr. Kunz went outside just to see what was going on but he didn't speak to anyone. He then went back inside to say goodbye to his friends and then left the establishment after last call, around 1:30 a.m. He found the behavior of the security offensive because it was overly violent and unnecessary. Mr. Kunz said he noticed the customer was bleeding from the mouth and it looked like around his eyes were getting dark like a bruise when he was escorted out of the establishment and he had observed that he was not bleeding before the altercation. Mr. Kunz said that it appeared that when the second security guard approached, he was going to stop the violent security guard. Mr. Kunz did not see any management around while he was there. When asked if Mr. Kunz had ill feelings towards the establishment that would affect his testimony, Mr. Kunz said no, he has always liked Thunderstruck Valley, he has friends that work there, and he and his dad have played music there.

Mr. Volkmann asked Mr. Kunz how far he was standing away from the security and the customer when the conversation took place. Mr. Kunz said 15 to 20 feet and he could see it clearly. The security guard was standing with his back to the wall and he and the customers were already talking when he got there. He did not know the customers. The customer's friend left the altercation about 10 seconds before the fight. Mr. Kunz testified that he thought the security guard yelled to the customer's friend to "get the f away" and the friend just absorbed back into the crowd. Mr. Kunz repeated what he saw during the altercation for Mr. Volkmann. Mr. Volkmann asked Mr. Kunz if he saw what happened to make the security guard start screaming at the customers. Mr. Kunz said no, he was visiting with his friends. Mr. Kunz said that when the

security guard was done punching the customer, the customer was basically laying back on the stage and the security guard went up the stairs and grabbed the customer by the head and tried to knee him. The other security guard was just getting to the altercation about that same time. Mr. Volkmann asked Mr. Kunz the names of the clubs that he was a door guy at and during those times had he seen fights at those clubs. Mr. Kunz replied that he was a door guy at Mesa Theater, Naggy McGee's, and Barons, and he had seen fights at those clubs. Mr. Volkmann asked if Mr. Kunz has been back to Thunderstruck Valley since August 10th and asked if he had seen any events like what happened on August 10th. Mr. Kunz said he had been back to Thunderstruck Valley about three times and had not seen any other events. He observed different security guards working. Mr. Kunz stated that prior to August 10th he had seen customers escorted out a couple of times but it was not overly violent.

Ms. Merritt asked Mr. Kunz if the fights he had witnessed prior to August 10th were customer vs. customer or security vs. customer. Mr. Kunz replied they were usually customer vs. customer and said that it is very rare for bouncers to get into fist fights with people. Ms. Merritt asked if Mr. Kunz actually saw the security guard kneeing the customer rather than just trying to. Mr. Kunz said it was hard to tell but it did look painful. Ms. Merritt asked what the time frame was from when Mr. Kunz heard the laughing to when he heard the screaming. Mr. Kunz said about one minute. Ms. Merritt asked if the security officer that was doing the striking appeared to have any injuries. Mr. Kunz said no. Mr. Kunz said he found it odd that the security guard was wearing gloves that were made for punching because they have padding on them to protect knuckles. Ms. Merritt asked if Mr. Kunz noticed the customer come back inside the establishment. Ms. Kunz said no, the customer did not go back inside once he was escorted out. Ms. Merritt asked Mr. Kunz if he saw the security guard again when he's been back into Thunderstruck Valley. Mr. Kunz said yes, at Halloween, but he kept his distance from him because he does not like violent people.

Mr. Volkmann asked Mr. Kunz if he feels differently if the customer touches the security guard first. Mr. Kunz said the security guard has to use a more aggressive way to remove the customer from the bar. Mr. Volkmann asked Mr. Kunz if he has had any self-defense training. Mr. Kunz said no, he has not. Mr. Volkmann asked Mr. Kunz if he or anyone else had any incidents with that security guard on Halloween. Mr. Kunz said no.

Ms. Merritt asked Mr. Kunz if he felt that had the customer struck the security guard first, would that have warranted the security guards actions. Mr. Kunz said no. Ms. Merritt asked if the customer was a physical threat while he was laying on the stage with his hands up. Mr. Kunz said no.

Ms. Merritt also asked that Mr. Kunz not be released from her subpoena. Hearing Officer Grattan agreed but also asked Ms. Merritt to consider releasing the witnesses that have already testified as soon as she feels she can.

After a short break, Ms. Merritt advised that she and Mr. Volkmann agreed that the four witnesses, Mr. Thompson, Mr. Padilla, Ms. Padilla, and Mr. Kunz can be released from their subpoenas. Hearing Officer Grattan agreed.

Hearing Officer called for a lunch recess at 11:40 a.m.

The Hearing reconvened at 12:54 p.m.

Hearing Officer Grattan advised that while he was out for lunch, he went over to Thunderstruck Valley and took notice of the approximate measurements which included the stage that is 25 inches high, the distance to the back bar, depending on where at the back bar from the staircase, is between 13 feet and 22 feet, and the distance to the elevated seating area is 26 feet. He also noted that he had no interaction with the owner of Thunderstruck Valley other than getting a tape measure from him and being shown around by him.

Ms. Merritt called her next witness, Cory Russell Hatcher, 258 28 Road, Grand Junction, CO 81503, who was sworn in by Hearing Officer Grattan.
Ms. Merritt asked Mr. Hatcher if he was employed at Thunderstruck Valley on August 10, 2014 and asked him what his job was. Mr. Hatcher said he was employed at Thunderstruck Valley and his job was to observe patrons to make sure they did not get too drunk, or cause any problems. Ms. Merritt asked if he was a security officer and was the security under a different business name. Mr. Hatcher said yes he was a security officer and the business name was Strategic Alliance Security. Ms. Merritt asked if Mr. Hatcher had any training and if so, who provided the training. Mr. Hatcher said he did have training that was provided by Strategic Alliance Security which included workbook training and teacher-to-person training. Ms. Merritt asked if Mr. Hatcher had a primary assignment the night of August 10th. Mr. Hatcher said no, he was floating throughout the business. Ms. Merritt asked Mr. Hatcher if, on that night, he saw Gabriel Cohen engaged in a verbal altercation. Mr. Hatcher said yes. Mr. Hatcher was handed a diagram marked Exhibit E (attached) and was asked to place a number one where he observed the verbal altercation and a number three where he was standing. Mr. Hatcher testified that while floating around the floor, keeping an eye on everyone, he noticed one of their security officers in an altercation with three customers. One of those customers was asked to leave and did and that left the security officer and two patrons. The patron that was eventually handcuffed got real close to the security officer's (Gabriel) face. Mr. Hatcher heard Gabriel repeatedly telling the patron to be quiet. They got closer and closer until Gabriel's hands went up. The patron pushed Gabriel in a striking fashion and his hands went on Gabriel's neck. Gabriel pushed the patron back with open hands. Mr. Hatcher then went to the altercation to assist and Gabriel was struggling with the patron and trying to get handcuffs on him. The patron was on his stomach kicking and trying to get Gabriel off of him. Mr. Hatcher said he observed Gabriel having red marks on his neck and face, but he never noticed Gabriel striking customer in the face or kneeing him in the head or kicking him. Gabriel did put his knee to shoulder just to keep the customer down to get him under control. He did find it odd that other witnesses said that they witnessed Gabriel kneeing the customer in the head and

punching him in the face. Mr. Hatcher said that Gabriel did not step up on the stage, he was down on the floor the entire time. Mr. Hatcher was able to assist and get the handcuffs on the patron. Mr. Hatcher did go outside to get his handcuffs and mentioned to law enforcement that Gabriel was amped up meaning that adrenalin was running high. Mr. Hatcher did not remember telling law enforcement that he told Gabriel to back off, what he remembered was telling Gabriel that he would walk the patron out once the cuffs were on him. Mr. Hatcher said that he and Gabriel had to keep telling the other customer that was with the patron that was being handcuffed to step back. When Mr. Hatcher was asked if the security officers received training on how not to get amped up, he said "for the most part, yes". Mr. Hatcher never saw the customer put his hands up in a defensive mode, ask the security officer to stop, or say that he wanted to leave. Mr. Hatcher did not notice that the customer had any injuries. He handed the customer to a law enforcement officer and then went back into the establishment. Mr. Hatcher said that prior to being security at Thunderstruck Valley, he was also bartender and security for Quincys and Charlie Dwellingtons.

Mr. Volkmann asked Mr. Hatcher if it is common in his experience to become amped up in situation like that altercation. Mr. Hatcher said yes. He believes that the customer was also amped up because he was nose to nose with Gabriel and then shoved him. The customer remained amped up while being handcuffed because he was kicking and trying to pull his head back to head butt anyone who was behind him. Mr. Hatcher explained that the security officers do have training to keep from getting amped up but in the event of situations like that altercation, that is why there is extra security available to help out with a situation like that to keep everyone calm. Mr. Hatcher had not had any interaction with the customer during the evening nor did he have any knowledge of the customer speaking to a manager regarding his buddy being kicked out. Mr. Hatcher did not know who the law enforcement officer was that he gave the customer in handcuffs to. There were no other security officers that assisted with the altercation except Gabriel and himself.

Ms. Merritt asked how long it took to get the handcuffs on the customer after he arrived at the altercation. Mr. Hatcher said almost immediately, Gabriel was able to hold the customer while Mr. Hatcher placed the handcuffs on him.

Mr. Volkmann asked if the first physical aggression Mr. Hatcher saw was the customer pushing or shoving at the security officer. Mr. Hatcher said yes.

Hearing Officer Grattan asked Mr. Hatcher to place a two on the diagram where he saw Mr. Cohen. Hearing Officer Grattan circled number one where the altercation took place, circled number two where Mr. Cohen was stationed, and circled number three where Mr. Hatcher was stationed.

City Attorney Shaver asked Mr. Hatcher where he is currently employed. Mr. Hatcher said First United Oil Rig Company in Vernal, UT. City Attorney Shaver asked if Mr. Hatcher has any affiliation whatsoever with Strategic Alliance Security or MZ Entertainment. Mr. Hatcher said no.

Ms. Merritt called her next witness, Officer David Godwin with the Grand Junction Police Department, who was sworn in by Hearing Officer Grattan. Officer Godwin testified that on August 10th, he responded to the location of Thunderstruck Valley on foot during bar crowd control around 1:00 a.m. along with a few other police officers. At Thunderstruck Valley, he witnessed two or three security officers removing a customer but was unsure who actually had control of the customer. Officer Keech took possession of the customer. Officer Godwin spoke with Gabriel Cohen, security officer, about what happened. Mr. Cohen advised him that he had been struck in the throat by a punch but Officer Godwin did not observe any strike or red marks on his neck. Mr. Cohen's face was kind of red, as if his blood was flowing but he did not appear to be in any pain. He was amped up and appeared kind of nervous. He noticed that Mr. Cohen had on fingerless gloves that have either plastic or Kevlar knuckles that are designed for protection while fighting. As a police officer, they are prohibited to wear those types of gloves because they can be viewed as a weapon and they are threatening to look at. Officer Godwin said that Mr. Cohen told him his side of the story as to what happened during the altercation which was while in the bar, a male approached him who appeared to be intoxicated and started talking about his buddy that apparently got thrown out, and they exchanged some words, and at some point a third male came and grabbed Mr. Cohen and the initial male he was speaking to struck him in the neck. Mr. Cohen said he struck the male that had struck him. Officer Godwin did not remember noticing any injuries or blood on Mr. Cohen's hands. The material of the gloves is smooth and could be wiped off but Officer Godwin could not be sure if they had been wiped off or not. The two males in the altercation appeared to know one another.

Mr. Volkmann asked Officer Godwin if he prepared a report on the incident. Officer Godwin said he did not because Officer Keech was the primary investigator, however, he has read the report that was prepared by Officer Keech. Officer Godwin said he believes he was still talking to Mr. Cohen when the customer (Mr. Thompson) was examined by EMT's and left in an ambulance. No criminal charges were made regarding the incident. Officer Godwin did not recollect interviewing anyone else regarding the incident.

Ms. Merritt called her next witness, Officer David Keech, Patrol Officer, Grand Junction Police Department, who was sworn in by Hearing Officer Grattan.

Ms. Merritt asked Officer Keech if he had been in law enforcement prior to working for the Grand Junction Police Department. Officer Keech said no, prior to law enforcement, he worked in security, i.e., major events, shopping centers, malls, construction sites, and night clubs. He studied martial arts and has taught it and has provided training in defensive arts and continues to study and train in defensive arts. Working for the Grand Junction Police Department, he was taught FBI defensive tactics and was assigned to liquor licensing enforcement and training. He has spoken to the liquor licensed establishments personnel about tactics, and best practices in ways to do their job better. He has spoken to security personnel and management of Thunderstruck Valley several times. On August 10th, they had an increased presence of Police

Officers downtown starting at midnight. He was called over to Thunderstruck Valley by security officer Gabriel Cohen who was leading out a customer (Mr. Thompson) in handcuffs with security officer Cory Hatcher nearby. Security officer Cohen handed over Mr. Thompson to Officer Keech and told him that Mr. Thompson had assaulted him. Officer Keech took Mr. Thompson to a park bench a little ways away from the venue and talked to him. Mr. Thompson told Officer Keech that Mr. Cohen beat the crap out of him and that he was asked to leave the establishment by Mr. Cohen but refused because he wanted to find out the status of his friend. Officer Keech did not see any injuries to Mr. Thompson's hands but he did observe blood around his teeth in his lower jaw as if a tooth had possibly been knocked loose or he had bitten the inside of his mouth.

Hearing Officer Grattan called for a recess at 1:55 p.m. for the regular Liquor and Beer Meeting and stated that the hearing will resume at 2:45 or five minutes after the end of the regular meeting if it lasts past 2:45 p.m.

The hearing resumed at 2:47 p.m.

Hearing Officer Grattan advised that relevant to CRS 12-47-303, subsection 4 and subsection 6, he found that there is no evidence of failure to truthfully disclose matters required pursuant to the application forms required by the Department of Revenue, and advised he will approve the temporary license to be converted into a permanent license.

Ms. Merritt continued to question Officer Keech. Officer Keech stated that he left Mr. Thompson in handcuffs because he was still very agitated until he was examined by paramedics and again noted that he did not see any injuries on his hands. Officer Keech stated that after Mr. Thompson was taken away in an ambulance, he briefly spoke with Mr. Cohen. He did observe that it appeared that he had red marks on his neck and his face was flushed. Officer Keech said that if he had been struck in the chest with an open hand that moved up to the chest he would have had difficulty breathing and perhaps coughing a bit which Officer Keech did not observe. Officer Keech advised that in a previous conversation with Mr. Cohen, he had advised Officer Keech that he had taught an Israeli Krav Maga Martial Arts class in New Castle. Officer Keech advised that Mr. Cohen had told him that he was a hot head and Officer Keech has observed that he gets very emotional and upset very quickly. He was very upset initially that night, but calmed down by the time he talked to him later on. Officer Keech advised that the touching with the open hand would fall under a very low level of physical harassment, an unwanted physical contact. An appropriate reaction for that kind of contact would be to use a stiff arm to push a person away instead of striking a person. The previous testimony indicating that Mr. Thompson received continued physical contact while down on the ground would be considered excessive. The injuries Officer Keech observed on Mr. Thompson were not extensive enough to indicate that Mr. Cohen was acting inappropriately. Officer Keech stated that it is his understanding that the security company is contracted by Thunderstruck Valley to provide security and Mr. Cohen is employed by the security company. It would not be odd that a

customer would approach a security officer to find out why someone was kicked out of the establishment. Officer Keech advised that initially he investigated this matter for criminal assault charges because it appeared there was a fight and Mr. Cohen went beyond defending himself. No charges were filed because if Mr. Cohen had used the physical force the Mr. Thompson said he did, Mr. Thompson would have had more severe injuries so he didn't feel assault charges would have been warranted. Officer Keech forwarded the case to Grand Junction Police Department PST Meghan Woodland for her to do follow up for liquor enforcement purposes. Based on his training and experience, Officer Keech advised that once Mr. Cohen had Mr. Thompson on the ground, the kicking, punching, and striking should have stopped because Mr. Thompson was no longer a threat.

Mr. Volkmann asked Officer Keech how Mr. Thompson showed signs of agitation which led to leaving handcuffs on him. Officer Keech said that he was complaining about the security and how they assaulted and beat the crap out of him. Officer Keech testified that Mr. Thompson had not specifically said who told him to leave the establishment but he did not leave because he wanted to find out more information about his friend. Officer Keech said he was outside of Thunderstruck Valley for about an hour before Mr. Thompson was presented to him and during that hour, he did not witness anyone removed by force so he did not have knowledge of the friend who was kicked out. Officer Keech's conversation with Mr. Cohen occurred after Officer Godwin's conversation with Mr. Cohen. Even though Mr. Thompson requested medical attention, the paramedics did not feel that Mr. Thompson needed medical attention. Officer Keech confirmed that Mr. Thompson requested being taken to the hospital in an ambulance because he wanted to get that guy in as much trouble as possible which in Mr. Thompson's earlier testimony; he said he did not make that statement. Officer Keech said that it is not uncommon for a patron to ask more than one person at an establishment about why something happened, i.e. Mr. Thompson asking both the manager and the security officer to get the answer that he wanted about his friend. Officer Keech explained a project that he started in 2011 which was called the "POP" (problem oriented policing) project which eventually included all of the bars in the City. Officer Keech said that putting Mr. Thompson in handcuffs was probably reasonable to detain him, however the testimonies stating Mr. Thompson was kicked and struck while on the ground was excessive. Officer Keech said the entire process to detain Mr. Thompson should not have taken more than a minute. Officer Keech spoke to Mr. Hatcher after Mr. Thompson was taken away. Officer Keech said that he was told by Officer Godwin that the third person (Mr. Thompson's friend) was a distraction to security officer Cohen and that is when Mr. Thompson punched Mr. Cohen.

Ms. Merritt asked Officer Keech if he was able to identify the third person (Mr. Thompson's friend). Officer Keech said he was never identified. He stated that he does not remember speaking to management from Thunderstruck Valley regarding the incident. Officer Keech said that Mr. and Mrs. Padilla testified that there were no strikes to Mr. Cohen by Mr. Thompson. Officer Keech said that Mr. Kunz would be classified as an independent witness. In his police

report, Officer Keech identified the incident as a physical altercation, which would fall under a disturbance.

Mr. Volkmann asked Officer Keech if he is familiar with the process of using the knee strike to the arm or shoulder to gain control to restrain someone. Officer Keech said yes.

Ms. Merritt asked if the knee strike would be best to use to restrain someone. Officer Keech advised that a knee strike would be best if deployed to the side of the body, ribs or thigh, to take the persons attention away from the arms.

Hearing Officer Grattan asked if Officer Keech agrees that Mr. Cohen was amped up and would he say that Mr. Thompson was intoxicated. Officer Keech said yes to both questions, and stated some of the obvious signs of intoxication that he noticed in Mr. Thompson.

Mr. Volkmann asked if any testing was done to Mr. Thompson to determine level of intoxication. Officer Keech said no.

Mr. Volkmann called his first witness, Mark Aaron Towner, owner of MZ Entertainment, LLC, who was sworn in by Hearing Officer Grattan.

Mr. Towner said that MZ Entertainment, LLC is a restaurant known as Thunderstruck Valley and does not own or have any other interest in any other liquor license. Mr. Towner testified that Strategic Alliance Security was hired to provide security for Thunderstruck Valley approximately one week before they opened. He said they came highly recommended by a friend of his in Colorado Springs who runs a club known as Copperhead Road. It was his friend in Colorado Springs who advised Mr. Towner to use a third party trained security company because of the importance of proper security. When they first opened, Mr. Towner hired a couple of people to act as all-purpose bouncers to keep the floors clean, bus, and help monitor the crowd. Strategic Alliance had five or six security officers and MZ Entertainment had two or three at first. Approximately in mid-August, Strategic Alliance took over all of the security because they wanted to set a tone of zero tolerance for fighting. Mr. Towner believes the incident on August 10th occurred prior to the change in security. The cost of security at Thunderstruck Valley is $11,000 to $12,000 per month. Mr. Towner believes that Mesa Theatre has recently hired Strategic Alliance for their security. There are eight or nine security persons at Thunderstruck Valley on Friday and Saturday nights and he listed where they are all stationed. The security at the gate refuse entry to anyone who appears intoxicated and the security at the door scan everyone's identification and check for appearance again. They ask people to leave every Friday and Saturday night for various reasons. Mr. Towner said they do not allow fighting on the premises and take action anytime there is a fight. Since the incident on August 10th, they now have put together an "86" list, beefed up the security, and installed cameras. Mr. Cohen, since that incident, is the security perched at the eagles nest to monitor the establishment.

Ms. Merritt asked where Mr. Towner was located the evening in question. Mr. Towner said he was out front. Every Friday and Saturday evening, around 11:00 p.m. he watches everyone who has been asked to leave and to talk to them so they don't leave angry. He also watches for anyone entering who appears to be intoxicated. Mr. Towner said he did see Mr. Thompson being escorted out but did not speak to law enforcement regarding the incident.

Mr. Volkmann called his next witness, Richard Keith Harris, Partner and Regional Manager for Strategic Alliance Security Company, who was sworn in by Hearing Officer Grattan.

Mr. Volkmann asked Mr. Harris if he was familiar with providing security for Thunderstruck Valley and asked him who else they provide security for. Mr. Harris replied affirmatively and said they also provide security to Intellitec College, the City of Colorado Springs, Sports Corp., 14 nightclubs across the State of Colorado, and others. Mr. Harris testified that he teaches the basic officers security course, a 24 hour course that meets or exceeds the criteria set forth by the City of Colorado Springs. He read an outline of course training and the document was submitted into the record as Exhibit F (see attached). Mr. Harris stated that it is company policy that all their security officers are trained using that criteria to become certified before they can perform on the job. Strategic Alliance Security Company is certified to conduct the certified training. They teach a course called MOAB (Management of Aggressive Behavior) to all their security officers. They teach a hand off course to help security know how to hand off an aggressive customer to another security officer. They also teach a defense tactics for training on how to defend themselves, a PPCT (Pressure Point and Control Tactics), a four hour hand cuff course that goes along with the PPCT course, and a Dictate Program which is more along the line of joint locks. Mr. Harris said he did review the circumstances involving the events of the altercation on August 10th because it is company policy to review the reports, start an investigation, contact persons involved, and try to put things together. The review process happens regularly. Both Mr. Cohen and Mr. Hatcher received all of the training and neither Mr. Cohen nor Mr. Hatcher who were involved in the altercation on August 10th have been disciplined or fired. The company has a force continuum that they use for a situation that requires force so that only the appropriate force is used to gain control of the situation. Mr. Harris advised that there are no agreements between Strategic Alliance and Thunderstruck Valley that allows or gives permission for fighting and there have been no more incidents that require review since the August 10th incident.

Ms. Merritt asked Mr. Harris if he was at Thunderstruck the night of August 10th. Mr. Harris said he was not. Mr. Harris testified that Mr. Cohen has been exposed to the joint locks tactics training (Dictate Program) and it is a very long, ongoing process with many components before one can be certified. Mr. Harris said that, based on his review, it is his understanding that Mr. Cohen felt that when he was struck, it was lethal force, and Mr. Cohen used the open palm strike to back the patron up to create space and place the patron in containment for the hand cuffs. Mr. Harris said that the knee strikes were not to the head, they were to the shoulder. Mr. Harris said there was an incident on August 30th

where Mr. Cohen was assisting a female who was knocked out on the second floor near where the eagles nest is and was struck in the face and received a broken eye socket. Mr. Harris said they have not had to review Mr. Cohen's behavior having a hot temper. Mr. Cohen was removed from having direct contact with customers only because it seemed an issue during the first meeting with Mr. Merritt and Ms. Woodland. Mr. Harris said it is their policy when an incident begins to escalate to get more than one security officer on the scene.

Hearing Officer Grattan asked Mr. Harris to describe the protocol if an officer is struck in an aggressive action in the neck by an intoxicated person. Mr. Harris explained that they would find that to be a potential lethal force and would ask that person to leave and would look at an arm or hand lock to get the customer into position for compliance to get them out of the building. If the customer was a potential danger, they would look at using handcuffs. If the aggression was to a fight level, the security officer would go to less than lethal and so on to gain control of the customer. A customer who is handcuffed should not be subject to additional force. If there is more than one customer in a situation, it changes the force used to gain control. When a customer is squirming or wriggling, they are resisting; if they are kicking, that is considered aggressive. Analysis and reasonableness is part of the protocol and has to be made in lieu of the situation immediately.

Hearing Officer Grattan asked about the availability of time to continue the hearing for the room, the attorneys, Ms. Kemp, and City Attorney Shaver. Everyone was available except City Attorney, who would have to leave to prepare for another meeting at 5:00 p.m. and Mr. Volkmann, who would be available until 6:00 p.m.

Hearing Officer Grattan called for a recess at 4:30 p.m.

The hearing resumed at 4:36 p.m.

City Attorney Shaver left the hearing.

Mr. Volkmann called his next witness, Gabriel Alexander Cohen, employee of Strategic Alliance Security Company, who was sworn in by Hearing Officer Grattan.

Mr. Cohen testified that he performs security services solely for Thunderstruck Valley. Mr. Cohen explained that he is certified as a level three instructor in Krav Maga (close combat in Hebrew), a certified law enforcement Krav Maga instructor in weapons disarming, handcuffing through the United States Krav Maga Association. Mr. Cohen stated that on August 10, 2014, he was a security officer at Thunderstruck Valley (and currently a security officer at Thunderstruck Valley) and observed Mr. Thompson and an unidentified friend talking (appeared to be almost harassing) to a manager (Ryan) after another friend of theirs was escorted out of the establishment. Mr. Cohen approached Ryan to make sure everything was ok and after being told yes, he went back to

his post against the wall by the stage on the first floor. Mr. Cohen was given a diagram, Exhibit G (see attached), and asked to mark and place a number one where his post was and the altercation with Mr. Thompson began, a number two where interaction with the customers and Ryan took place, and a number four where the "eagles nest" is. Mr. Cohen was standing next to the steps when Mr. Thompson and his friend approached him and stood on each side of him. Mr. Cohen described the friend whom he has not seen since. Mr. Thompson asked Mr. Cohen why his friend was kicked out twice. When Mr. Cohen replied that he nothing to do with that twice and referred Mr. Thompson to another manager towards the front at the bar. When Mr. Thompson put his finger to Mr. Cohen's chest asking again about his friend, Mr. Cohen advised Mr. Thompson that putting his hands on Mr. Cohen could be considered an assault and if he does not quit asking, he will be asked to leave. Mr. Cohen stated that it appeared Mr. Thompson appeared close to being intoxicated. Mr. Thompson put both hands up and told Mr. Cohen that he is not kicking him out and Mr. Cohen told Mr. Thompson that it is time to go. Mr. Cohen turned towards Mr. Thompson and Mr. Thompson put his hands on Mr. Cohen's chest. Mr. Cohen reached around to Mr. Thompson to put his hand on Mr. Thompson's shoulder to let him know it is time to go. Mr. Thompson's friend then placed his hand on Mr. Cohen's shoulder and Mr. Cohen swatted the friends hand off of his shoulder and then felt Mr. Thompson's hands on his neck and face to which Mr. Cohen turned and did a palm strike of the hand to Mr. Thompson's face and he fell back on the stage on his back, lifted up his legs, and was kicking. Mr. Cohen could hear Mr. Thompson's friend getting closer, turned, and told him to get back and turned back to get ahold of Mr. Thompson's legs. Mr. Cohen put his knees up on the stage and attempted to get side control of Mr. Thompson, grabbed his wrists and rolled Mr. Thompson onto his stomach who continued to wiggle around. Mr. Cohen started to put the handcuffs on Mr. Thompson but the handcuffs hit Mr. Thompson's watch and did not clasp. Mr. Cohen put handcuffs down, climbed up on the stage to get side control and used PPCT by kneeing Mr. Thompson in the shoulder to help gain control of him. Mr. Cohen said he was "adrenalined up". He heard his coworker Cory, who came over on his own, say he got a handcuff on Mr. Thompson and told Mr. Cohen to get his other hand and Cory finished cuffing Mr. Thompson and starting walking him out. Mr. Cohen had requested other patrons to leave Thunderstruck Valley a few dozen of times and had never ended up in that type of altercation and had placed other patrons twice in handcuffs prior without either of those incidents turning physical like with Mr. Thompson. Mr. Cohen said he believes the whole altercation lasted under 30 seconds. Mr. Cohen said he owns a pair of fingerless gloves with Kevlar on the knuckles, he had them with him that night, however, he did not have them on because there is a rule that does not allow them to be worn in the club. He did put them on when he went outside when he was following Mr. Hatcher with Mr. Thompson. Mr. Cohen only struck Mr. Thompson one time with his hand and maybe two knee strikes, but he never struck Mr. Thompson's friend once during the altercation.

Ms. Merritt asked Mr. Cohen if the friend that was with Mr. Thompson left when he was told to step back. Mr. Cohen said he did not see him after he told him to step back. Mr. Cohen testified that customers were all around in close

proximity to where the altercation was. Mr. Cohen said there conversation was normal voice level and maybe it did escalate when he was asking Mr. Thompson to leave. Mr. Cohen was not surprised that customers did not hear him when he asked Mr. Thompson to leave because, overall, it was pretty loud in the establishment. Mr. Cohen said that it is common for people to inquire why certain people get kicked out, but it is not common for those people to approach more than one manager/security officer to ask the same question. Mr. Cohen stated that he was pretty sure that the hand that went to his throat was Mr. Thompson's and also stated that it may have slid up from his chest to the throat. Mr. Cohen said he remembers talking to Officer Godwin outside of the establishment about marks to his throat, however, he did not remember saying that Officer Godwin may not see any marks. Mr. Cohen testified that he did not hit or kick Mr. Thompson while he was on stage. When the other security officer arrived (Mr. Hatcher), he told Mr. Cohen that he has handcuffs on one wrist of Mr. Thompson's and asked Mr. Cohen to grab the other wrist. Mr. Cohen said he did not grab Mr. Thompson's head at any time to gain control. He also never heard Mr. Thompson say to stop and to say that he would leave. Mr. Cohen said that immediately after the incident, he spoke with Police Officer Godwin and a female Police Officer, but did not speak with Police Officer Keech until later on and they shared stories about their experiences and training in security and also stated that he may have told Officer Keech that he is hot headed and can lose control on occasion. Mr. Cohen stated that he was "amped up" during the altercation and clarified that it was because he was attacked by two men, his adrenaline was going, his faced was grabbed, and he struck a person. Mr. Cohen said that being "amped up" is an adrenaline dump but being mad is losing self-control. He couldn't recall whether or not he told Officer Keech or Officer Godwin about Mr. Thompson poking him in the chest. Mr. Cohen said that he was not disciplined by his employer or Thunderstruck Valley for the incident, however, his position did change after a couple of weeks and he was up in the eagles nest for a while to be out of the spotlight. It was more of a business move and not disciplinary. Mr. Cohen was surprised to hear that three witnesses claim that he threw the first strike and continued to strike with no provocation from Mr. Thompson. Mr. Cohen stated that he believes that he followed the continuum of procedures in handling Mr. Thompson.

Hearing Officer Grattan asked Mr. Cohen how long the entire incident lasted with Mr. Thompson and his friend. Mr. Cohen said that the conversation was about two minutes and the actual conversation and the confrontation was about 30 seconds. Hearing Officer Grattan asked Mr. Cohen if he noticed any earrings on Mr. Thompson and at any point during their conversation, was he laughing with Mr. Thompson. Mr. Cohen said he did not notice any earrings and he was not laughing with Mr. Thompson during their conversation; he may have given him a strange smile when Mr. Thompson asked him why his friend was kicked out and when Mr. Cohen replied with something like "Are you kidding me?" Hearing Officer Grattan asked Mr. Cohen if perhaps he accidently hit Mr. Thompson in the head when he was going for his shoulder with his knee and also asked him how many knee thrusts he used. Mr. Cohen replied that, even though he doesn't think he did, it could be possible that he accidently hit

Mr. Thompson in the head even though he was aiming for the shoulder and he thinks maybe there were two or three knee thrusts to Mr. Thompson.

There were no more witnesses.

In closing argument of behalf of the City, Ms. Merritt said that the information provided during the hearing clearly shown that on August 10, 2014, there was a time that the business was not being orderly and it has been acknowledged by the licensee that there is a relationship between MZ Entertainment aka Thunderstruck Valley and Strategic Alliance Security. It was not contested that there was a fight or disorderly conduct between Mr. Thompson and Mr. Cohen, the City questions whether or not there was a disturbance that was offensive to the average citizen. Four people testified that it was; Mr. Thompson, Mr. Padilla, Mrs. Padilla, and Mr. Kunz. None of the witnesses testified that Mr. Thompson made the strike or touch that brought on the punch or hand contact by Mr. Cohen to Mr. Thompson. They had indicated that Mr. Thompson put his hands up and wanted no fight. The witnesses did not appreciate the excessive use of force used by Mr. Cohen especially when Mr. Thompson was lying on the stage face down. The witnesses testified that Mr. Thompson was not trying to kick or strike Mr. Cohen while lying down but Mr. Cohen kept on kicking, kneeing, and grabbing Mr. Thompson's head and trying to knee him again. The City is relying on the senses of the average citizens because that is what the law requires. The question is why Mr. Cohen continued to strike Mr. Thompson after he was down on the ground as was testified by the witnesses and the witnesses being the average citizen. The burden is not criminal, it's the preponderance of evidence and she believed the City had met that burden.

In closing argument on behalf of MZ Entertainment, LLC dba Thunderstruck Valley, Mr. Volkmann stated that being a security guard in a nightclub is a dangerous business. Decisions have to be made instantaneously. The testimony showed that Mr. Thompson went over to Mr. Cohen to look for an interaction after speaking with the manager (Ryan) who is the person who kicked out Mr. Thompson's friend. Mr. Thompson's testimony totally conflicted with everything he had said before. Ms. Padilla clearly spoke of other events when she stated she didn't need the drama or the language. Studies have shown that people recounting events that happened suddenly have difficulty with accuracy. The event that took place is a circumstance that, by State Statute, the establishment would have knowingly allowed disorderly conduct or permitted the activity that was offensive to the public. Mr. Volkmann said that he would suggest that what the Padilla's saw when they said that Mr. Thompson was wrestling and grappling around would be offensive and inappropriate to them. They saw the activity but they didn't know what was going on. The witness, Mr. Kunz, said he has been in Thunderstruck Valley before and after the altercation on August 10, 2104 which could suggest that the incident was not as offensive as he reported. The recollection of the Padilla's differed; on their exhibits, they indicated their location in different areas. Ms. Padilla stated she could not see the entire altercation. The injuries Mr. Thompson received did not support a heavy beating. Mr. Volkmann stated that Thunderstruck Valley did not knowingly allow the altercation to happen;

they took many steps to stop it. Mr. Volkmann said that they do not see this as a liquor code violation and the disorderly conduct is not as broad as it appeared to be.

Ms. Merritt rebutted that the extent of the injuries do not sustain whether or not the contact was made. Mr. Cohen admitted he made contact. All of the witnesses testified that Mr. Thompson's friend was long gone from the altercation before Mr. Cohen struck Mr. Thompson which changed the fact pattern as to how Mr. Cohen should have responded. The witnesses said that Mr. Thompson did not make contact with Mr. Cohen. He raised his hands palm up indicating he did not want to fight. The witnesses' creditability was key in showing what was offensive to the average citizen. The regulation reflects activities offensive to the average citizen; it does not say to the average security guard. The witnesses said the continued striking, hitting, and kneeing were unnecessary. The disorderly conduct was caused by Mr. Cohen.

Hearing Officer Grattan asked Mr. Volkmann to provide the citation for the case law that Mr. Volkmann referred to earlier by noon on November 6, 2014. Mr. Volkmann advised that he had the citation with him and provided a copy to Hearing Officer Grattan which he read the citations for Ms. Merritt. He told Mr. Volkmann if he had any others, he can email them to him and copy Ms. Merritt by noon on November 6, 2014 (attached). He provided Mr. Volkmann with his email address. He asked Ms. Merritt to provide any response she may have by the end of the day on November 7, 2014 (attached). Hearing Officer Grattan said that he understands Mr. Volkmann's point in reference to witnesses Mr. and Mrs. Padilla and he said Mr. Thompson's testimony did not make any sense and there were inconsistencies in his stories. Mr. Cohen's testimony made more sense.

Hearing Officer Grattan advised that he will provide a written order (attached).

III. ADJOURNMENT

The hearing was adjourned at 6:03 p.m.

(A)

CONFIRMATION OF OWNERSHIP
MZ ENTERTAINMENT, LLC

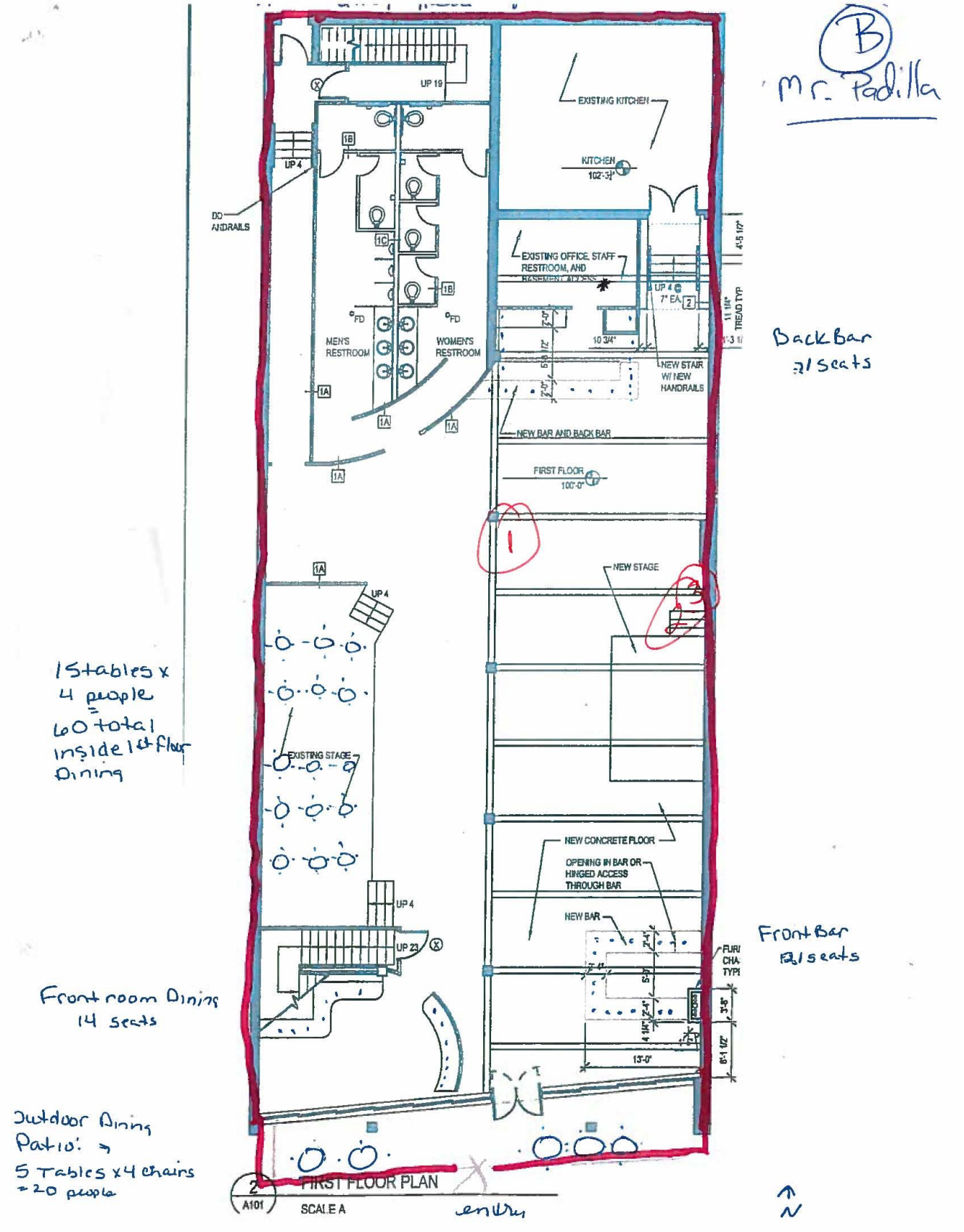
I, Mark Towner, of MZ Entertainment, LLC ("MZ"), hereby certify that the ownership of MZ is, and has been throughout the period since the formation of MZ, as follows:

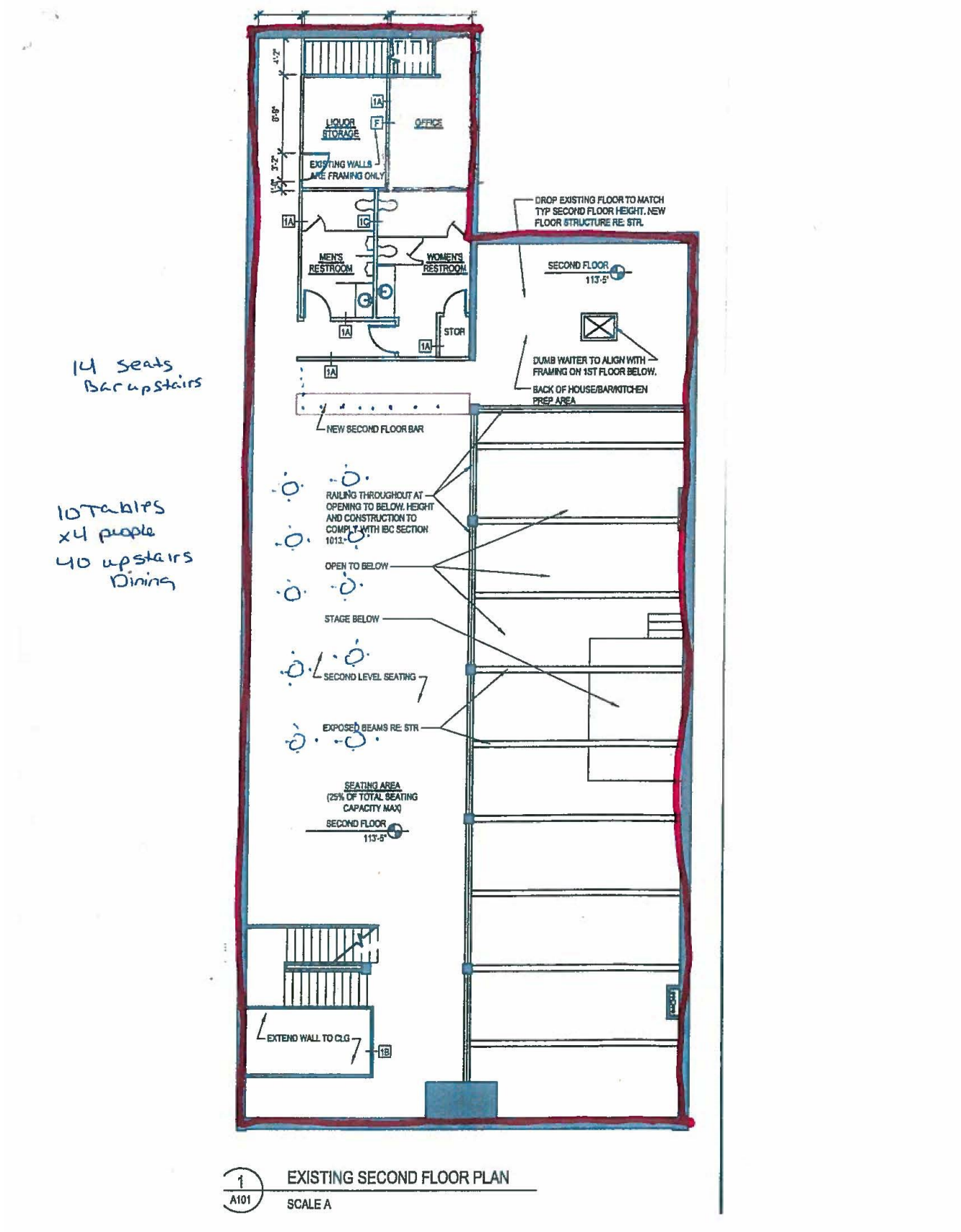
Mark Towner	50%
Zhanna S. Shearwood	50%

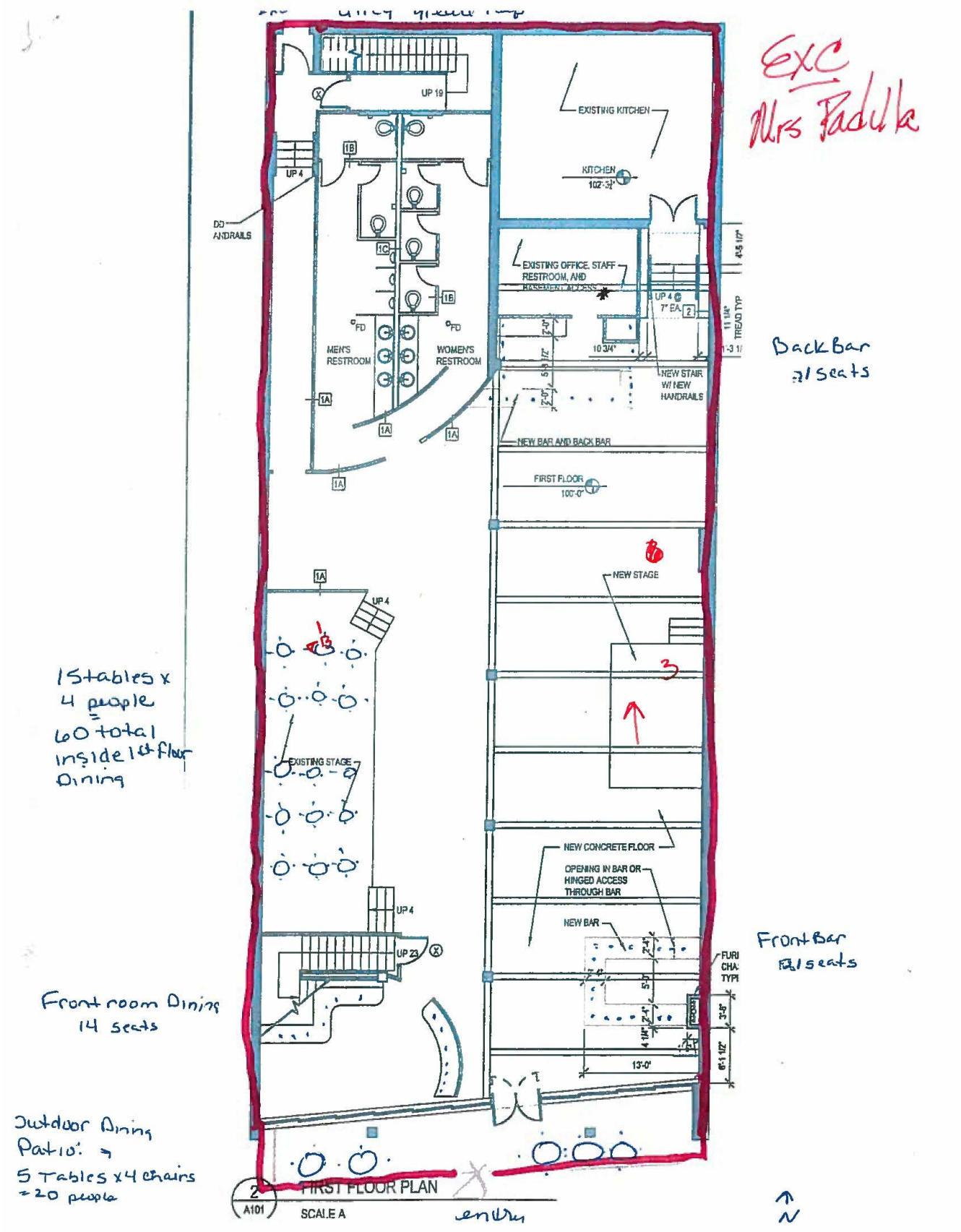
Dated this 4th day of November, 2014.

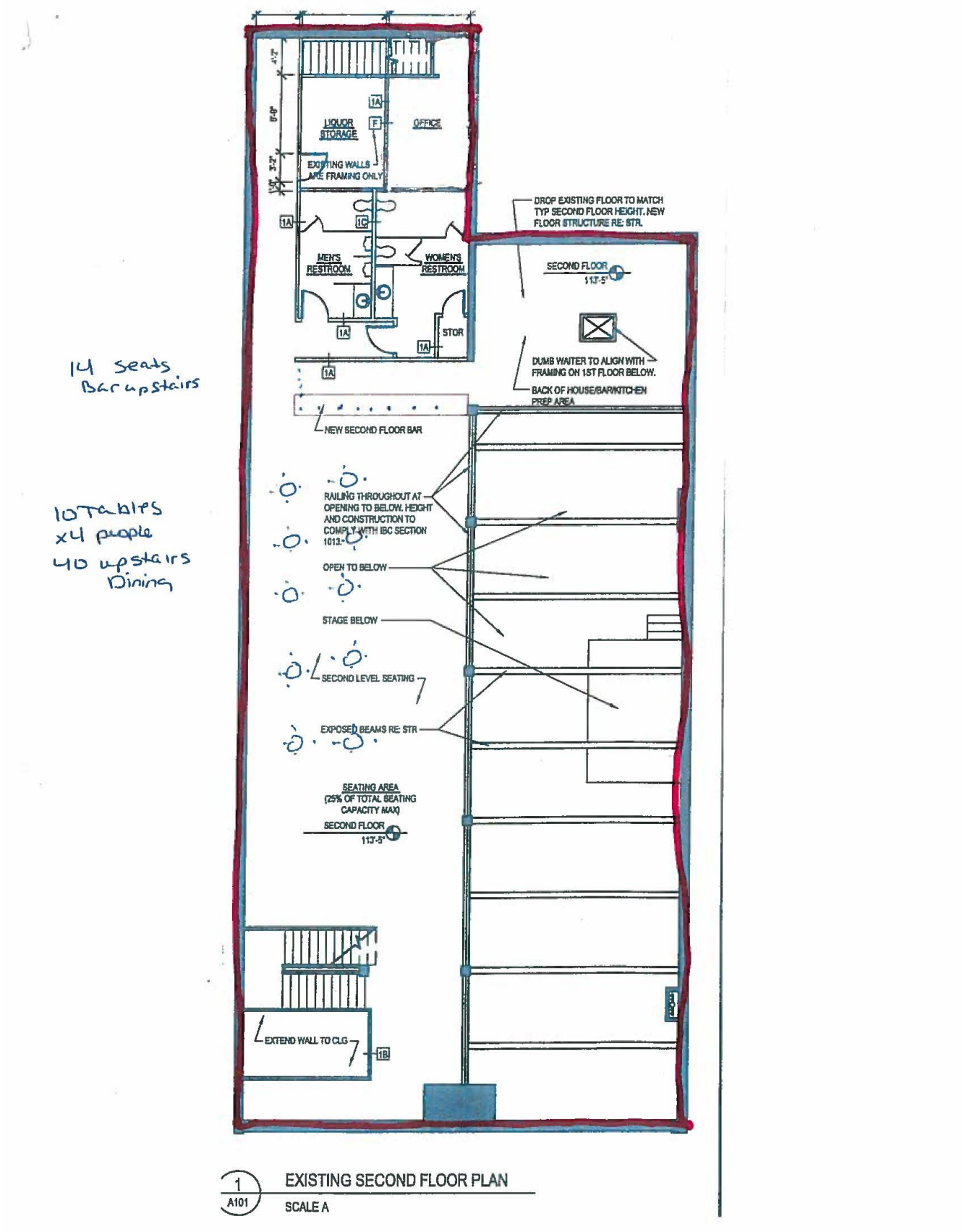
MZ Entertainment, LLC

By: _____
Its: Member


B
Mr. Padilla
EXISTING KITCHEN
KITCHEN
UP 19
UP 4
DO ANDRAILS
1B
1C
EXISTING OFFICE, STAFF RESTROOM, AND BASEMENT ACCESS
UP 4 @ 7" EA
2
MEN'S RESTROOM
WOMEN'S RESTROOM
FD
1A
NEW STAIR W/ NEW HANDRAILS
NEW BAR AND BACK BAR
FIRST FLOOR
100'-0"
BackBar 21 seats
1
NEW STAGE
UP 4
EXISTING STAGE
NEW CONCRETE FLOOR
OPENING IN BAR OR HINGED ACCESS THROUGH BAR
NEW BAR
UP 23
FRONT BAR
13'-0"
15 tables x 4 people = 60 total inside 1st floor Dining
Front room Dining 14 seats
Outdoor Dining Patio: → 5 Tables x 4 chairs = 20 people
2
A101
FIRST FLOOR PLAN
SCALE A
entry
N

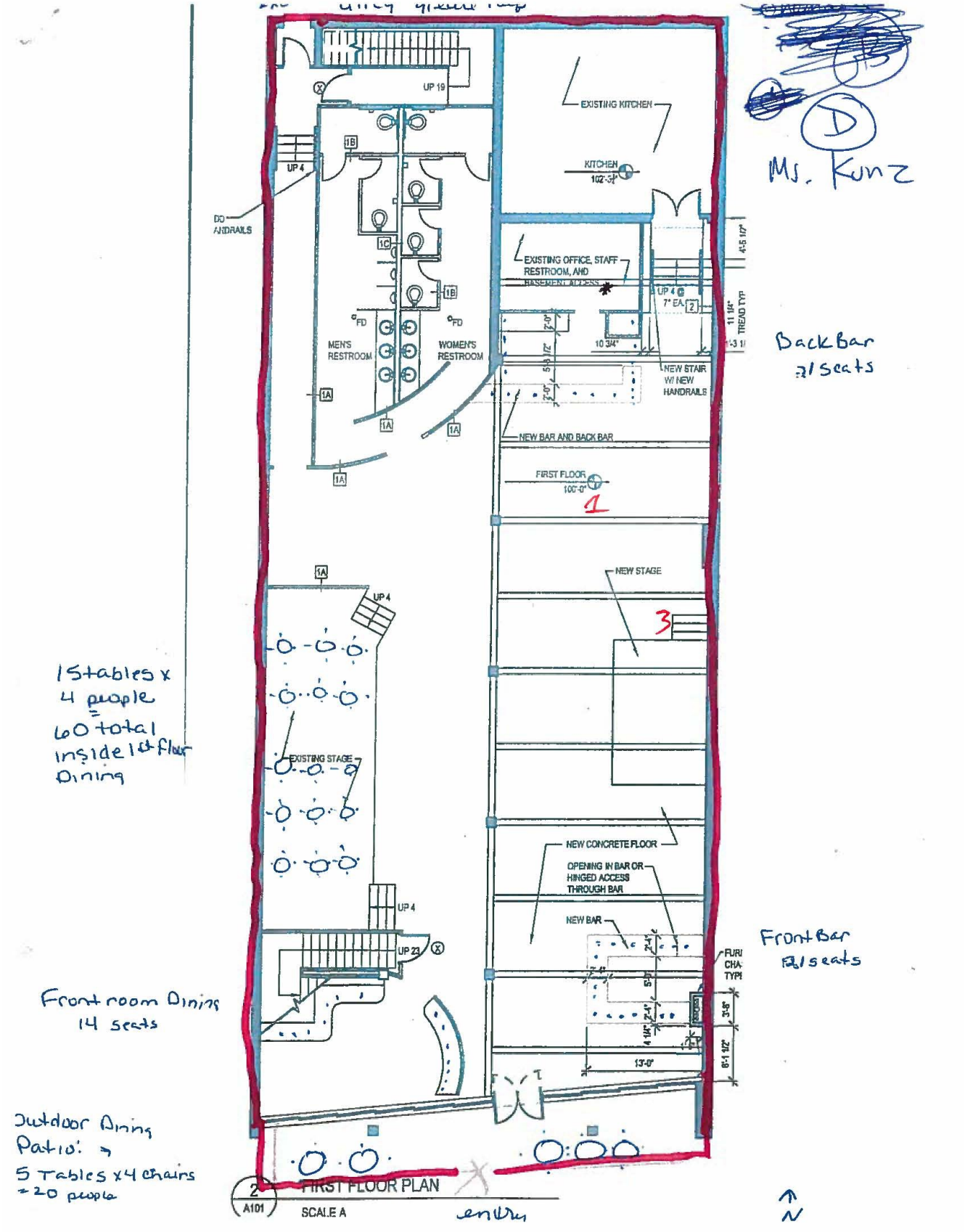

LIQUOR STORAGE
OFFICE
EXISTING WALLS ARE FRAMING ONLY
MEN'S RESTROOM
WOMEN'S RESTROOM
STOR
DROP EXISTING FLOOR TO MATCH TYP SECOND FLOOR HEIGHT. NEW FLOOR STRUCTURE RE: STR.
SECOND FLOOR 113'-5"
DUMB WAITER TO ALIGN WITH FRAMING ON 1ST FLOOR BELOW.
BACK OF HOUSE/BAR/KITCHEN PREP AREA
NEW SECOND FLOOR BAR
RAILING THROUGHOUT AT OPENING TO BELOW. HEIGHT AND CONSTRUCTION TO COMPLY WITH IBC SECTION 1013.
OPEN TO BELOW
STAGE BELOW
SECOND LEVEL SEATING
EXPOSED BEAMS RE: STR
SEATING AREA (25% OF TOTAL SEATING CAPACITY MAX)
SECOND FLOOR 113'-5"
EXTEND WALL TO CLG
14 seats Bar upstairs
10 Tables x4 people 40 upstairs Dining
1 A101 EXISTING SECOND FLOOR PLAN
SCALE A

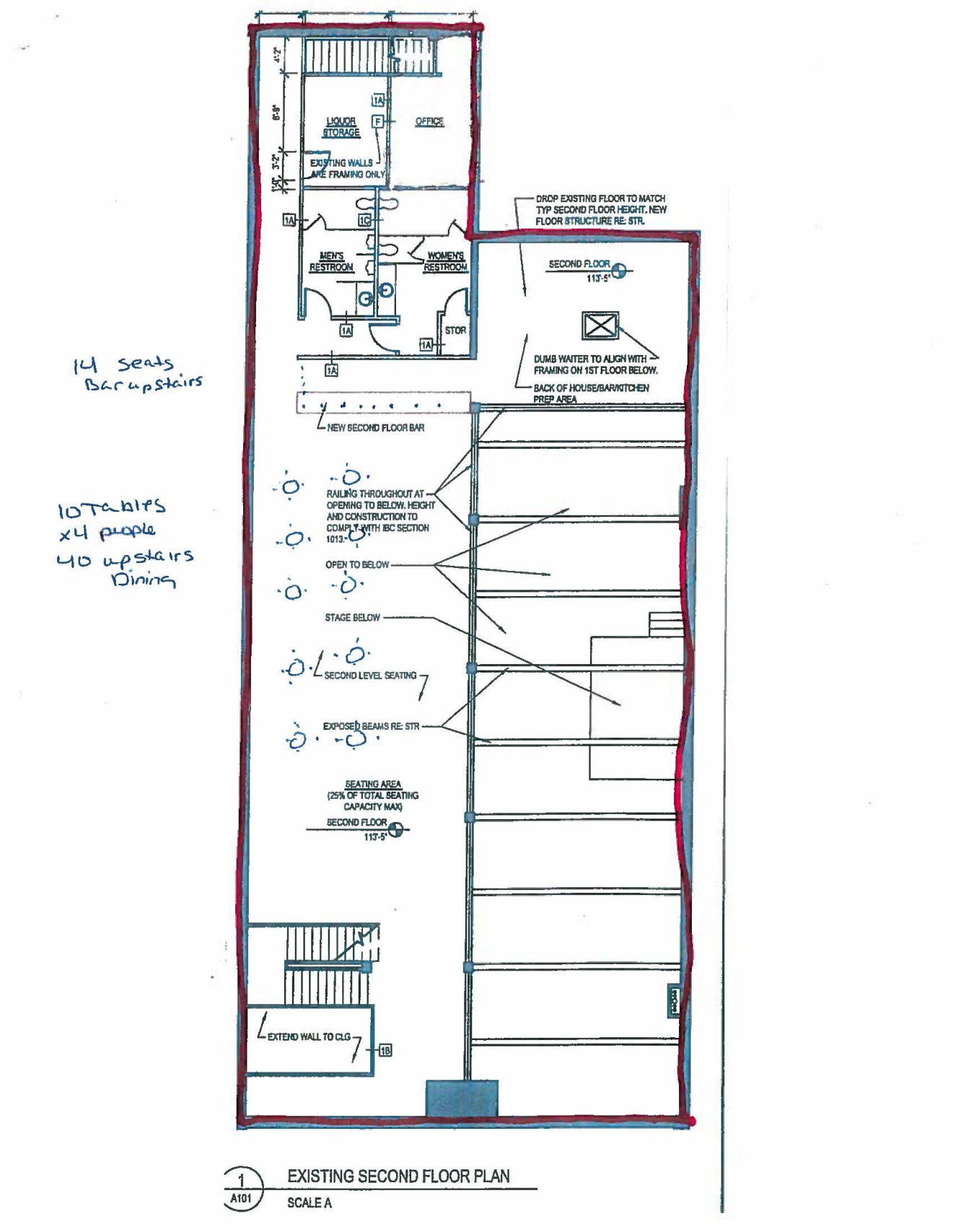

EXC
Mrs Padilla
UP 19
EXISTING KITCHEN
KITCHEN
UP 4
DD
ANDRAILS
EXISTING OFFICE, STAFF
RESTROOM, AND
BASEMENT ACCESS
MEN'S
RESTROOM
WOMEN'S
RESTROOM
NEW STAIR
W/ NEW
HANDRAILS
NEW BAR AND BACK BAR
FIRST FLOOR
100'-0"
Back Bar
21 seats
NEW STAGE
1 Stables x
4 people
=
60 total
inside 1st floor
Dining
EXISTING STAGE
UP 23
NEW CONCRETE FLOOR
OPENING IN BAR OR
HINGED ACCESS
THROUGH BAR
NEW BAR
Front Bar
21 seats
Front room Dining
14 seats
Outdoor Dining
Patio:
5 Tables x 4 chairs
=20 people
13'-0"
FIRST FLOOR PLAN
SCALE A
A101
entry
N



14 seats Bar upstairs

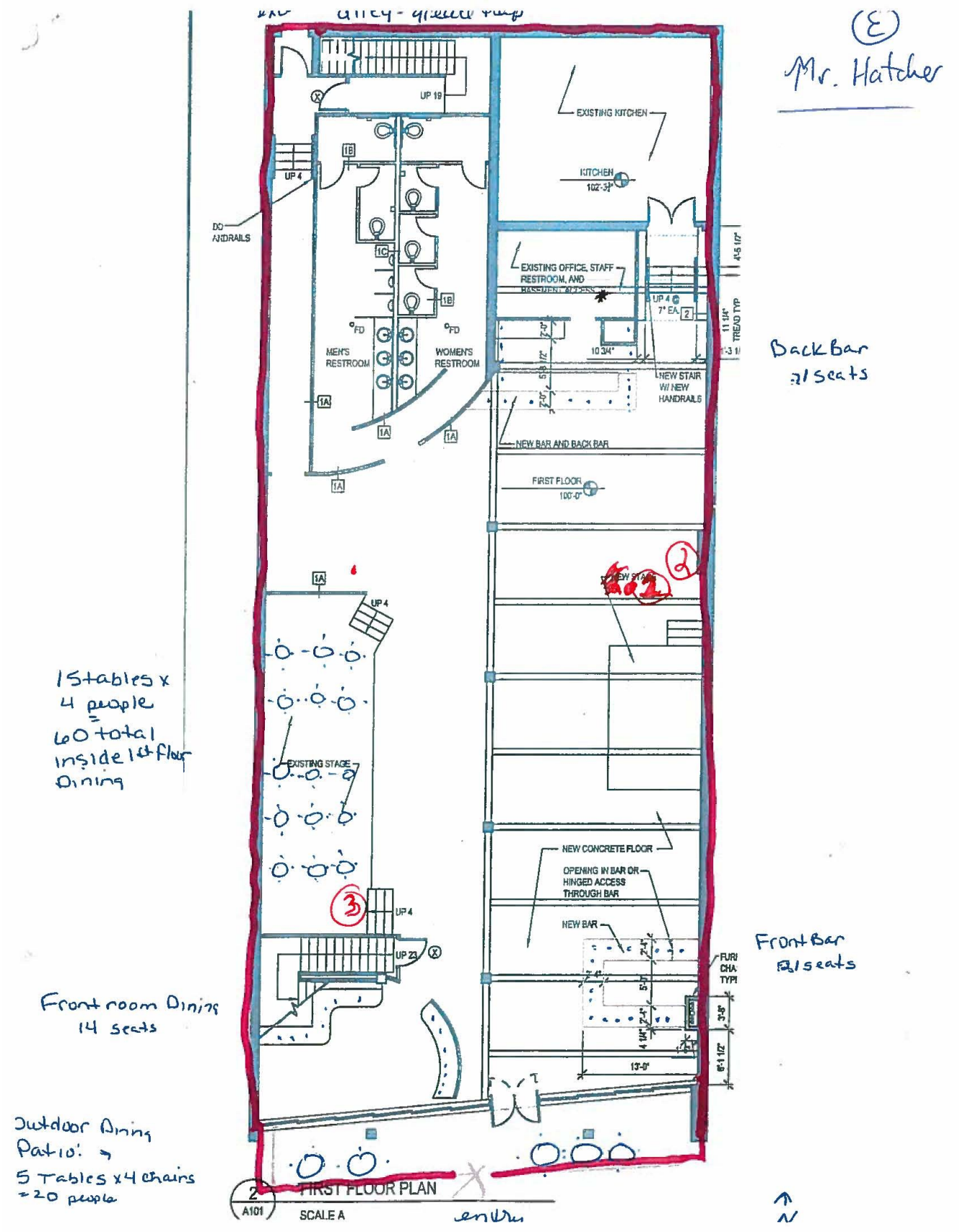
10 Tables x4 people 40 upstairs Dining


UP 19
EXISTING KITCHEN
KITCHEN
UP 4
DO ANDRAILS
EXISTING OFFICE, STAFF RESTROOM, AND BASEMENT ACCESS
MEN'S RESTROOM
WOMEN'S RESTROOM
NEW STAIR W/ NEW HANDRAILS
NEW BAR AND BACK BAR
FIRST FLOOR
NEW STAGE
EXISTING STAGE
NEW CONCRETE FLOOR
OPENING IN BAR OR HINGED ACCESS THROUGH BAR
NEW BAR
UP 23
FIRST FLOOR PLAN
SCALE A
Ms. Kunz
Back Bar 21 seats
15 tables x 4 people = 60 total inside 1st floor Dining
Front room Dining 14 seats
Front Bar 21 seats
Outdoor Dining Patio: 5 Tables x 4 chairs = 20 people



14 seats Bar upstairs

10 Tables x4 people 40 upstairs Dining


(E)
Mr. Hatcher
EXISTING KITCHEN
KITCHEN
EXISTING OFFICE, STAFF RESTROOM, AND
MEN'S RESTROOM
WOMEN'S RESTROOM
NEW STAIR W/ NEW HANDRAILS
NEW BAR AND BACK BAR
FIRST FLOOR
NEW CONCRETE FLOOR
OPENING IN BAR OR HINGED ACCESS THROUGH BAR
NEW BAR
EXISTING STAGE
Back Bar 21 seats
Front Bar 21 seats
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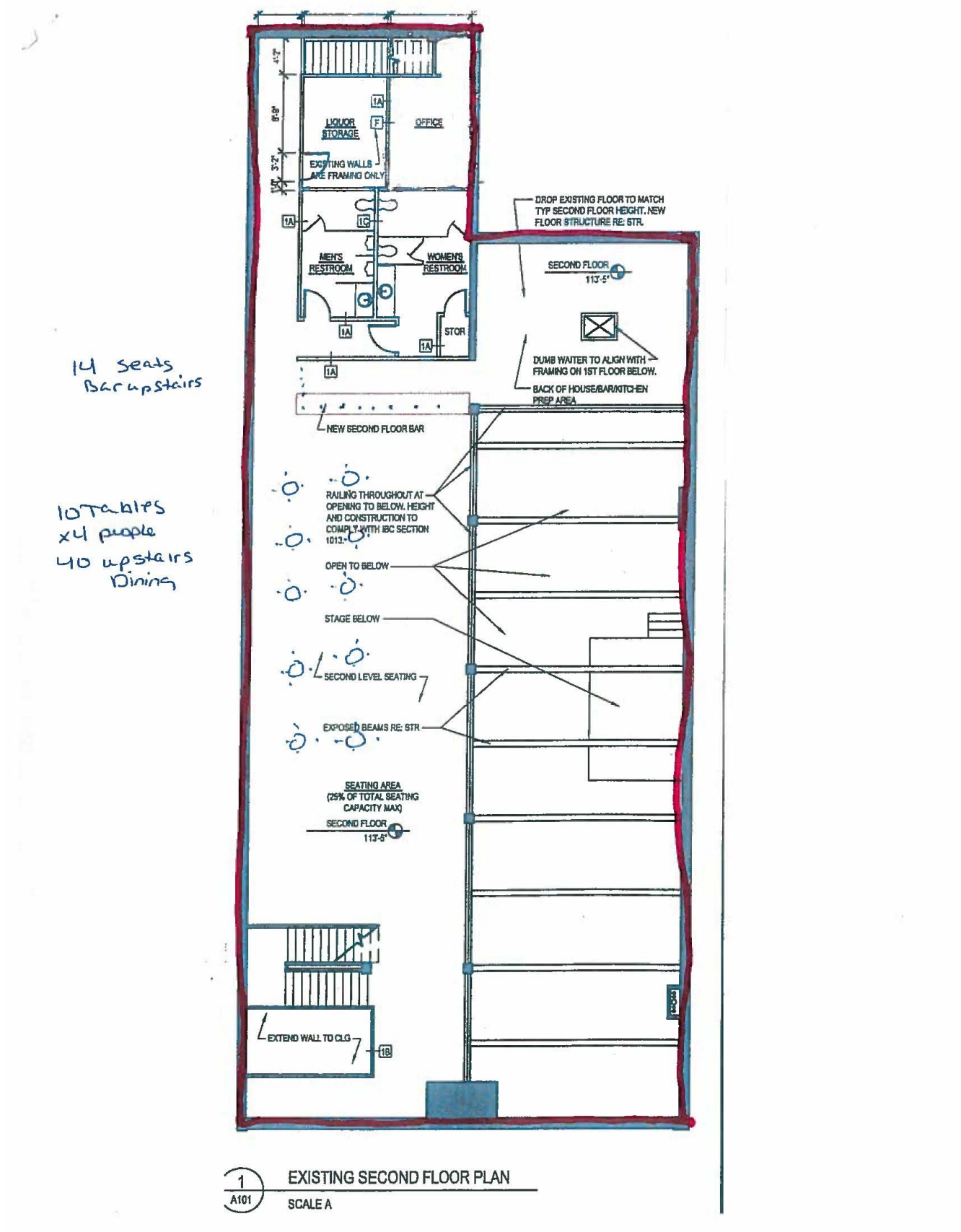
SCALE A
N



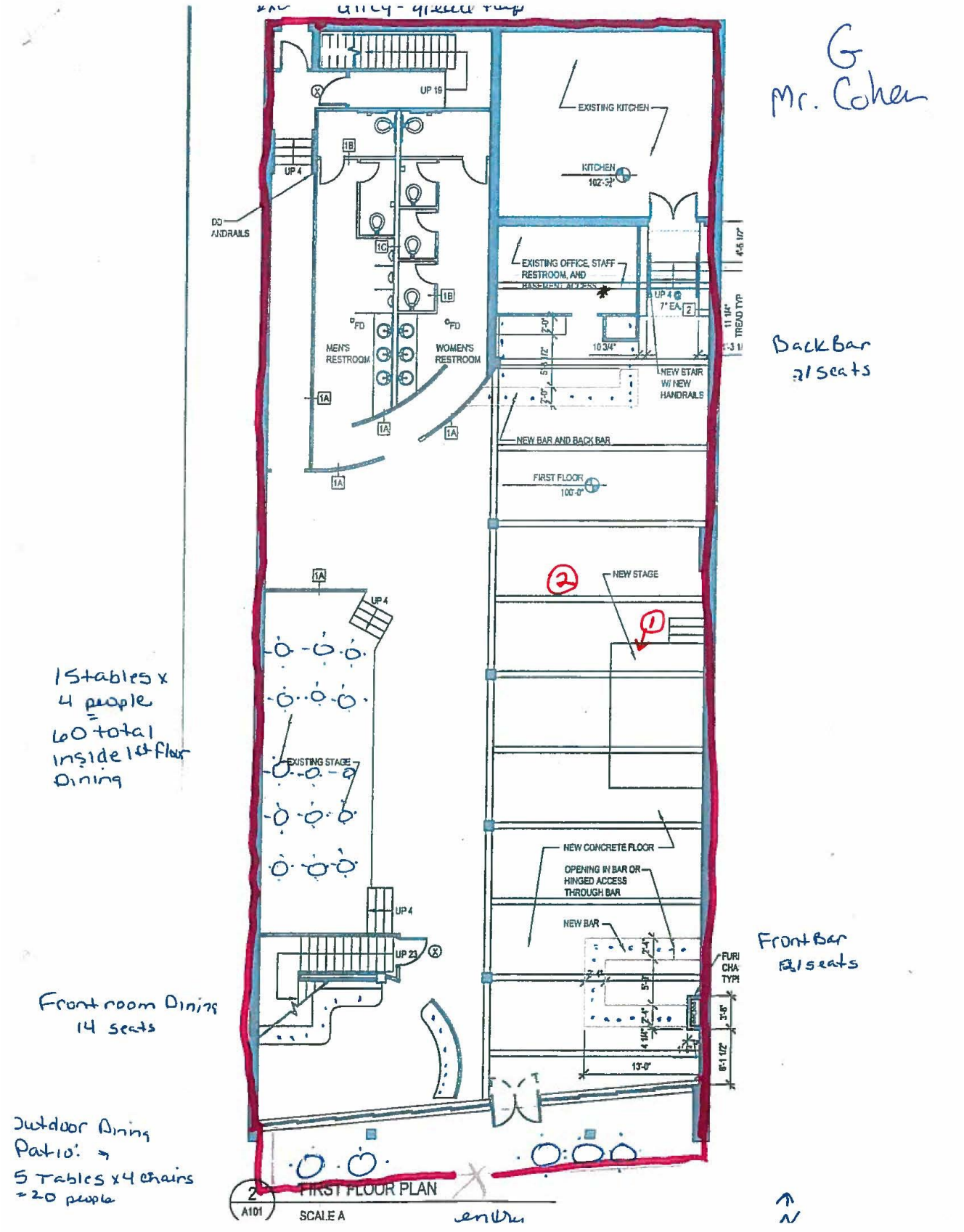
14 seats Bar upstairs

10 Tables x4 people 40 upstairs Dining

(F)

Courses of Training

- Corporate forms filled out. I.E. Drug Policies, Use of Corporate Vehicles, Tax Forms, Payroll Forms, Time Sheets, Time Off Requests, ETC (2 hours)
- Nature, role and duties of the private security officer (1 hour)
- Private security officer professional conduct and ethics (1 hour)
- Principles of communication (1 hour)
- Preservation of evidence, investigation and crime scene security (1 hour)
- Federal, State and local laws, codes, and ordinances (2 hours)
- Use of force as it relates to legal powers (3 hours)
- Legal limitations and liability implications (1hour)
- DICTATE Training: Basic Officer Control Tactics and Empty Hand Self-Defense Measures (4 hours)
- PPCT Hand Cuffing Procedures (2 hours)
- O.C. Training Qualification (2 hours)
- Interaction and cooperation with local law enforcement (2 hours)
- Emergency response procedures, to include basic principles of first aid (1 hour)


G
Mr. Cohen
EXISTING KITCHEN
KITCHEN
EXISTING OFFICE, STAFF RESTROOM, AND BASEMENT ACCESS
MEN'S RESTROOM
WOMEN'S RESTROOM
NEW STAIR W/ NEW HANDRAILS
NEW BAR AND BACK BAR
FIRST FLOOR
NEW STAGE
EXISTING STAGE
NEW CONCRETE FLOOR
OPENING IN BAR OR HINGED ACCESS THROUGH BAR
NEW BAR
UP 16
UP 4
UP 23
DO ANDRAILS
FIRST FLOOR PLAN
SCALE A
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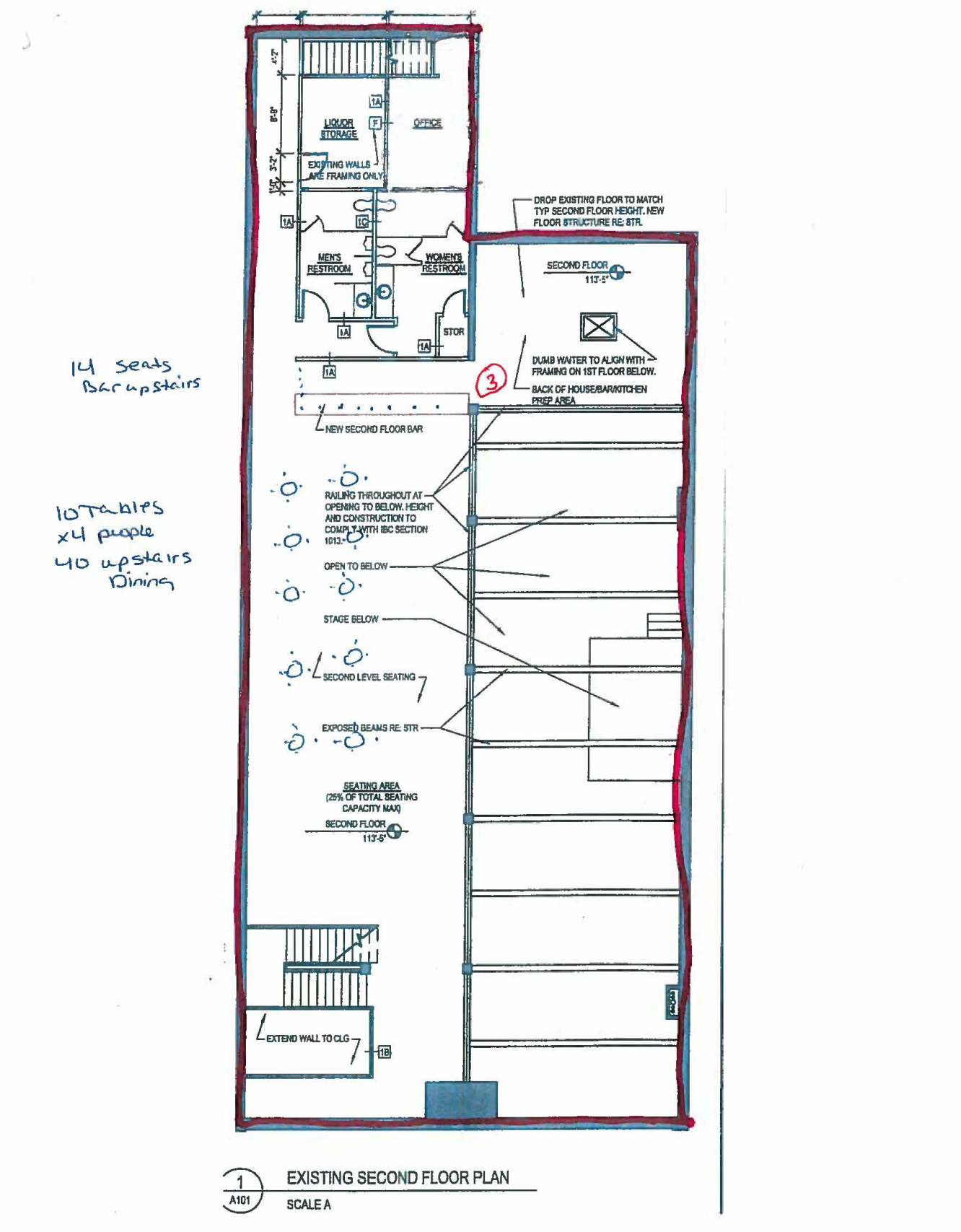
14 seats
Bar upstairs
10 Tables
x4 people
40 upstairs
Dining
LIQUOR STORAGE
OFFICE
EXISTING WALLS ARE FRAMING ONLY
MEN'S RESTROOM
WOMEN'S RESTROOM
STOR
DROP EXISTING FLOOR TO MATCH TYP SECOND FLOOR HEIGHT. NEW FLOOR STRUCTURE RE: STR.
SECOND FLOOR 113'-5"
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SEATING AREA (25% OF TOTAL SEATING CAPACITY MAX)
SECOND FLOOR 113'-5"
EXTEND WALL TO CLG
1 A101 EXISTING SECOND FLOOR PLAN
SCALE A

Debra Kemp - Fwd: Copies of legal authority

From: Mike Grattan <michael@gjlawyer.com>
To: Debra Kemp <debrak@ci.grandjct.co.us>
Date: 1/28/2015 8:17 AM
Subject: Fwd: Copies of legal authority
Attachments: Morris Schindler case.pdf; Full Moon case.pdf; Costiphx case.pdf; CRS SECTION 18-9-106.pdf; REG 47~900 Conduct of Establishment.PDF

Michael J. Grattan III,
Michael J. Grattan III, P.C.,
109 West Kennedy Avenue
Grand Junction, CO 81505;
(970) 243-6333 - phone;
(970) 243-6388 - fax

-------- Forwarded Message --------
Subject: Copies of legal authority
Date: Thu, 6 Nov 2014 18:57:30 +0000
From: Thomas C. Volkmann <Tom@shgvlaw.com>
To:michael@gjlawyer.com <michael@gjlawyer.com>, DeLayne Merritt <delaynem@ci.grandjct.co.us> (delaynem@ci.grandjct.co.us) <delaynem@ci.grandjct.co.us>
CC: Amy Luker <Amy@shgvlaw.com>, Mark Towner <mark@thunderstruckvalley.com> (mark@thunderstruckvalley.com) <mark@thunderstruckvalley.com>

Mike and Delayne:
Attached are the cases I referenced, along with the statutes referenced therein, from late yesterday. I have included the cases I handed to Mike at the podium, but thought this would have them in one place for you. I refrained from briefing or summarizing, at the request of Mr. Grattan…
Thomas C. Volkmann
SPIECKER, HANLON, GORMLEY & VOLKMANN, LLP
P.O. Box 1991
Grand Junction, CO 81502
(970)243-1003
(970)243-1011 (fax)

Westlaw Delivery Summary Report for VOLKMAN,THOMAS

Your Search:	"strict liability" & "LIQUOR LICENSE"
Date/Time of Request:	Thursday, November 6, 2014 11:10 Central
Client Identifier:	MZ
Database:	USER-DEFINED-MB
Citation Text:	251 P.3d 1076
Lines:	699
Documents:	1
Images:	0

251 P.3d 1076
(Cite as: 251 P.3d 1076)

C

Colorado Court of Appeals,
Div. III.
MORRIS–SCHINDLER, LLC, a Colorado limited liability company, d/b/a Roslyn Grill,
Plaintiff–Appellant,
v.
CITY AND COUNTY OF DENVER, a political subdivision of the State of Colorado, by and through The Office of the Director of Excise and Licenses, acting as local licensing authority,
Defendant–Appellee.

No. 09CA1997.
Sept. 2, 2010.

Background: Liquor licensee brought action challenging decision by city and county not to renew hotel and restaurant **liquor license**. The District Court, City and County of Denver, Catherine A. Lemon, J., upheld decision. Licensee appealed.

Holdings: The Court of Appeals, Roy, J., held that:
(1) asserted violations on which city and county relied in finding good cause for nonrenewal of **liquor license** could not be based on **strict liability**, but required some level of knowledge on part of licensee;
(2) there was no competent evidence that licensee had actual or constructive knowledge of undercover narcotics transaction inside establishment, as necessary for finding Liquor Code violation;
(3) there was sufficient competent evidence to support conclusion that licensee over-served patrons and permitted overly intoxicated patrons to remain within, and immediately outside, the establishment;
(4) liquor licensing authority is not required in nonrenewal proceedings to apply the criteria governing sanctions process, and therefore a violation supporting a nonrenewal need not also support a revocation; and
(5) a liquor licensee has no property right in the renewal of a license and need not be provided procedural due process protections attendant to a property right.

Order of district court affirmed in part and reversed in part; case remanded with directions.

West Headnotes

[1] Administrative Law and Procedure 15A 683

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak681 Further Review
15Ak683 k. Scope. Most Cited Cases

The Court of Appeals reviews the decision of the administrative body, not that of the trial court, in an appeal of a proceeding under rule governing review of decisions by a governmental body or officer or lower judicial body exercising judicial or quasi-judicial functions. Rules Civ.Proc., Rule 106(a)(4).

[2] Administrative Law and Procedure 15A 754.1

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General
15Ak754 Discretion of Administrative Agency
15Ak754.1 k. In general. Most Cited Cases

Administrative Law and Procedure 15A 795

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak795 k. Jurisdictional questions. Most

Cited Cases

Review is limited to determining whether agency exceeded its jurisdiction or abused its discretion, under rule governing review of decisions by a governmental body or officer or lower judicial body exercising judicial or quasi-judicial functions. Rules Civ.Proc., Rule 106(a)(4).

[3] Administrative Law and Procedure 15A ⚿ 788

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak788 k. Determination supported by evidence in general. Most Cited Cases

Administrative Law and Procedure 15A ⚿796

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak796 k. Law questions in general. Most Cited Cases

Under rule governing review of decisions by governmental body or officer or lower judicial body exercising judicial or quasi-judicial functions, court may consider whether an agency misconstrued or misapplied the law, but it can reverse a finding of fact made by an administrative agency only if there is no competent evidence to support it. Rules Civ.Proc., Rule 106(a)(4).

[4] Administrative Law and Procedure 15A ⚿ 788

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak788 k. Determination supported by evidence in general. Most Cited Cases

"No competent evidence," for purposes of rule which permits district court to reverse finding of fact by administrative agency if there is no competent evidence to support the decision, means that ultimate decision of administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority. Rules Civ.Proc., Rule 106(a)(4).

[5] Intoxicating Liquors 223 ⚿102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

Asserted violations on which city and county relied in finding good cause for nonrenewal of **liquor license**, including sales of alcohol to minors, sale of drugs inside premises, and regular presence of over-served, drunk patrons coming out of and standing in front of the establishment, could not be based on **strict liability**, but required some level of knowledge on part of licensee, where statutes or regulations defining those violations contained the word "permit." West's C.R.S.A. § 12–47–901(1)(a.5), (5)(a); 1 Colo. Code Regs. § 203–2:47–900.

[6] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

Statutory interpretation is a question of law, which the Court of Appeals review de novo.

[7] Statutes 361 ⚿1072

251 P.3d 1076
(Cite as: 251 P.3d 1076)

361 Statutes
361III Construction
361III(A) In General
361k1071 Intent
361k1072 k. In general. Most Cited Cases
(Formerly 361k181(1))

When construing a statute, court must determine the intent of the legislature.

[8] Statutes 361 ⚖1101

361 Statutes
361III Construction
361III(C) Clarity and Ambiguity; Multiple Meanings
361k1101 k. In general. Most Cited Cases
(Formerly 361k190)

Court first determines whether statutory language has a plain and unambiguous meaning.

[9] Intoxicating Liquors 223 ⚖102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

The Court of Appeals, in reviewing decision of city and county not to renew **liquor license**, could only determine if the record supported the decision, not whether the Court of Appeals would arrive at a different decision.

[10] Intoxicating Liquors 223 ⚖102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

All reasonable doubt must be resolved in favor of the action of the licensing authority in an action challenging nonrenewal of **liquor license**.

[11] Intoxicating Liquors 223 ⚖102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

There was no competent evidence that liquor licensee had actual or constructive knowledge of undercover narcotics transaction inside establishment, as necessary to support regulatory violation relied upon by city and county as good cause for nonrenewal of license; police targeted drug dealer standing near establishment who asked that officer follow him into establishment to complete transaction, officer testified that he had no idea whether any employees had observed transaction, officer never asked dealer if he had previously sold drugs in establishment, and bartender testified that she was not aware of undercover transaction and was "shocked" when other officers entered to arrest dealer. 1 Colo. Code Regs. § 203–2:47–900.

[12] Intoxicating Liquors 223 ⚖116

223 Intoxicating Liquors
223V Regulations
223k116 k. Conduct of business. Most Cited Cases

"Constructive knowledge" on part of liquor licensee, as necessary to find a Liquor Code violation based on permitting the sale of drugs inside premises, is knowledge that one exercising reasonable diligence should have. 1 Colo. Code Regs. § 203–2:47–900.

[13] Intoxicating Liquors 223 ⚖102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

There was sufficient competent evidence to support conclusion, relied on by city and county in finding good cause not to renew hotel and restaurant **liquor license**, that licensee violated Liquor Code by over-serving patrons and by permitting

overly intoxicated patrons to remain within, and immediately outside, the establishment; record included at least 12 emergency dispatch calls regarding disturbances at establishment or in its immediate vicinity, employees regularly attempted to run off loiterers and remove drunk or disorderly patrons, and neighbors testified to observing altercations outside establishment and numerous over-intoxicated individuals entering and exiting. West's C.R.S.A. § 12–47–901(5)(a); 1 Colo. Code Regs. § 203–2:47–900.

[14] Evidence 157 ⚿478(3)

157 Evidence
157XII Opinion Evidence
157XII(A) Conclusions and Opinions of Witnesses in General
157k478 Mental Condition or Capacity
157k478(3) k. Intoxication. Most Cited Cases

A lay witness who has had sufficient opportunity to observe the demeanor and conduct of another may express an opinion whether the latter was intoxicated.

[15] Intoxicating Liquors 223 ⚿159(2)

223 Intoxicating Liquors
223VI Offenses
223k157 Sales or Gifts to Prohibited Persons
223k159 To Minors
223k159(2) k. Intent, knowledge, or good faith of seller. Most Cited Cases

Liquor Code violations arising from sales to underage customers could be imputed to liquor licensee because an employee of the establishment through the exercise of reasonable care would have requested identification from the customer and thereby determined that the customer was not authorized to purchase or consume alcoholic beverages. West's C.R.S.A. § 12–47–901(1)(a.5).

[16] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

The Court of Appeals reviews constitutional challenges de novo.

[17] Constitutional Law 92 ⚿990

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k990 k. In general. Most Cited Cases

A statute is presumed constitutional, and court should construe the statute to uphold its constitutionality whenever a reasonable and practical construction may be applied.

[18] Constitutional Law 92 ⚿1004

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)3 Presumptions and Construction as to Constitutionality
92k1001 Doubt
92k1004 k. Proof beyond a reasonable doubt. Most Cited Cases

Constitutional Law 92 ⚿1030

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)4 Burden of Proof

92k1030 k. In general. Most Cited Cases

One challenging the validity of a statute has the burden of proving the statute to be unconstitutional beyond a reasonable doubt.

[19] Intoxicating Liquors 223 ⇐102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

Licensing authority is not required, in proceedings relating to nonrenewal of a **liquor license**, to apply the criteria governing sanctions process, and therefore a violation supporting a nonrenewal need not also support a revocation. West's C.R.S.A. §§ 12–47–103(9)(a), 12–47–302(1), 12–47–601.

[20] Statutes 361 ⇐1080

361 Statutes
361III Construction
361III(A) In General
361k1078 Language
361k1080 k. Language and intent, will, purpose, or policy. Most Cited Cases
(Formerly 361k188)

When discerning legislative intent, court looks first and foremost to the language of the statute itself.

[21] Statutes 361 ⇐1122

361 Statutes
361III Construction
361III(D) Particular Elements of Language
361k1122 k. Defined terms; definitional provisions. Most Cited Cases
(Formerly 361k179)

When the legislature defines a term in the statute, that term must given its statutory meaning.

[22] Intoxicating Liquors 223 ⇐102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

Any violation of a provision of the Liquor Code constitutes good cause for nonrenewal of a **liquor license**. West's C.R.S.A. §§ 12–47–103(9)(a), 12–47–302(1).

[23] Statutes 361 ⇐1152

361 Statutes
361III Construction
361III(E) Statute as a Whole; Relation of Parts to Whole and to One Another
361k1152 k. Design, structure, or scheme. Most Cited Cases
(Formerly 361k205, 361k206)

Statutes 361 ⇐1155

361 Statutes
361III Construction
361III(E) Statute as a Whole; Relation of Parts to Whole and to One Another
361k1155 k. Construing together; harmony. Most Cited Cases
(Formerly 361k206, 361k205)

The intent of the General Assembly is effectuated by considering the statutory scheme as a whole and giving a consistent, harmonious, and sensible effect to each individual section.

[24] Constitutional Law 92 ⇐4289

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)12 Trade or Business
92k4266 Particular Subjects and Regulations
92k4289 k. Intoxicating liquors. Most Cited Cases

251 P.3d 1076
(Cite as: 251 P.3d 1076)

Intoxicating Liquors 223 ⚖102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

A liquor licensee has no property right in the renewal of a license and need not be provided procedural due process protections attendant to a property right. U.S.C.A. Const.Amend. 14; West's C.R.S.A. Const. Art. 2, § 25.

[25] Constitutional Law 92 ⚖3905

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3905 k. Certainty and definiteness; vagueness. Most Cited Cases

A statute that is unconstitutionally vague constitutes a denial of due process of law under the Federal and Colorado Constitutions. U.S.C.A. Const.Amend. 14; West's C.R.S.A. Const. Art. 2, § 25.

[26] Constitutional Law 92 ⚖3876

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3876 k. Arbitrariness. Most Cited Cases

Due Process Clauses of Federal and Colorado Constitutions protect individuals from arbitrary governmental restrictions on property and liberty interests. U.S.C.A. Const.Amend. 14; West's C.R.S.A. Const. Art. 2, § 25.

[27] Constitutional Law 92 ⚖3865

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3865 k. In general. Most Cited Cases

In addressing due process issues, courts employ a bifurcated analysis requiring an initial delineation of the nature and extent of the asserted interest and, in the event that interest is constitutionally protected, an evaluation of the adequacy of the challenged process. U.S.C.A. Const.Amend. 14; West's C.R.S.A. Const. Art. 2, § 25.

[28] Constitutional Law 92 ⚖3874(1)

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and Deprivations Prohibited in General
92k3868 Rights, Interests, Benefits, or Privileges Involved in General
92k3874 Property Rights and Interests
92k3874(1) k. In general. Most Cited Cases

The Due Process Clauses of the Federal and State Constitutions protect individuals and entities from immediate governmental interference with present property interests, but not from possible governmental interference with potential property interests, and, therefore, a person claiming an unfair governmental deprivation of an interest in property must possess more than an anticipation of ownership of property. U.S.C.A. Const.Amend. 14; West's C.R.S.A. Const. Art. 2, § 25.

[29] Constitutional Law 92 ⚖4289

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)12 Trade or Business
92k4266 Particular Subjects and Regulations
92k4289 k. Intoxicating liquors. Most Cited Cases

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A **liquor license**, like any business or professional license, is a property right which is entitled to due process protection. U.S.C.A. Const.Amend. 14; West's C.R.S.A. Const. Art. 2, § 25.

[30] Intoxicating Liquors 223 ⇐102

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(A) In General
223k102 k. Renewal. Most Cited Cases

Liquor license nonrenewal proceeding would be remanded to licensing authority, where authority concluded there was good cause for not renewing license based cumulatively on three asserted Liquor Code violations, only two of those were supported by sufficient competent evidence, and authority did not indicated whether one of the three grounds, or which combination of less than all of them, would constitute good cause. West's C.R.S.A. § 12–47–302(1).

***1080** Dill Dill Carr Stonbraker & Hutchings, PC, H. Allen Dill, Adam P. Stapen, Denver, Colorado, for Plaintiff–Appellant.

David R. Fine, City Attorney, John D. Poley, Assistant City Attorney, Denver, Colorado, for Defendant–Appellee.

Opinion by Judge ROY.

Morris–Schindler, LLC (the licensee), doing business as Roslyn Grill (the establishment), appeals the court order upholding the nonrenewal of its hotel and restaurant **liquor license** by the City and County of Denver. We affirm in part, reverse in part, and remand for a determination of good cause in accordance with the views expressed in this opinion.

For more than twenty-six years, the licensee operated the establishment in Denver. Following the application for the renewal of the license in 2008, the Director of Excise and Licenses for Denver (director) issued an order directing the licensee to show cause why the renewal of the license should not be denied. *See* § 12–47–302, C.R.S.2009. The order gave notice of specific violations of the liquor laws during the term of the current license. These alleged violations were: (1) an undercover narcotics transaction occurring in the establishment that resulted in a declaration of a public nuisance being issued to the owner of the premises; (2) two sales of alcohol to a minor; (3) thirteen emergency calls involving fights, assaults, and sales of drugs; and (4) the regular presence of drunken or passed-out customers.

Following a hearing, the hearing officer recommended nonrenewal of the license based upon a finding of good cause and relying on all of the matters noticed. The director adopted the recommendation and issued a final decision.

The licensee commenced an action under C.R.C.P. 106(a)(4), asserting that the director misapplied the law by applying a **strict liability** standard to the alleged violations, that there was no competent evidence supporting the director's final order, and that the **liquor license** law was unconstitutional as applied.

The trial court concluded that the director did not abuse her discretion in finding that (1) the two sales to a minor and (2) the regular presence of over-served, intoxicated patrons loitering in front of the bar, a violation of Division of Liquor Enforcement Rule 47–900, 1 Code Colo. Regs. 203–2 (C.C.R.47–900), constituted good cause for nonrenewal. However, the trial court concluded that the director abused her discretion in concluding that an undercover narcotics transaction, which occurred in the establishment, constituted good cause for nonrenewal as there was no evidence that the licensee was aware of, involved with, or permitted the sale.

On appeal, the licensee argues that the director abused her discretion (1) in applying a **strict liability** standard in connection with violations of the Colorado Liquor Code (Code); (2) in finding that the licensee permitted an undercover narcotics

transaction; (3) in finding that the licensee permitted the sale of alcohol to intoxicated customers, and then permitted the intoxicated customers to loiter inside and outside the premises; (4) in not imposing the sanctions criteria for violations of the Code in the renewal hearing for good cause; and (5) in denying renewal as that action was manifestly excessive.

I.

[1][2][3][4] In an appeal of a C.R.C.P. 106(a)(4) proceeding, we review the decision of the administrative body, not that of the trial court. *Woods v. City & County of Denver*, 122 P.3d 1050, 1053 (Colo.App.2005). C.R.C.P. 106(a)(4) review is limited to a determination of whether the administrative agency exceeded its jurisdiction or abused its discretion. *Jayhawk Cafe v. Colo. Springs Liquor & Beer Licensing Bd.*, 165 P.3d 821, 824 (Colo.App.2006). We may consider whether the agency misconstrued or misapplied the law. *Bd. of County Comm'rs v. Conder*, 927 P.2d 1339, 1343 (Colo.1996). However, we can reverse a finding of fact made by an administrative agency only if there is no competent evidence to support it. *City of Colorado Springs v. Givan*, 897 P.2d 753, 756 (Colo.1995). " 'No competent evidence' means that the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained***1081** as an arbitrary and capricious exercise of authority." *Id.*

As pertinent here, section 12–47–302(1), C.R.S.2009, authorizes the local licensing authority to refuse to renew a **liquor license** "for good cause shown, subject to judicial review." In *Squire Restaurant & Lounge, Inc. v. City & County of Denver*, 890 P.2d 164 (Colo.App.1994), a division of this court held that the term "good cause" was overbroad, and, therefore, unconstitutional. In apparent response, the General Assembly defined the term. Section 12–47–103(9)(a), C.R.S.2009, now provides:

> "Good Cause," for the purpose of refusing or denying a license renewal or initial license issuance, means:
>
> (a) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this article or any rules and regulations promulgated pursuant to this article.

II. **Strict Liability**

[5] The licensee first argues that the director abused her discretion by applying a **strict liability** standard for violations of the Code. More specifically, the licensee argues that each provision of the Code cited by the director as a violation by the licensee, which formed the basis for good cause not to renew, contains the word "permit," which requires some level of knowledge, rather than **strict liability** and, therefore, the director misconstrued the law. We agree.

[6][7][8] Statutory interpretation is a question of law, which we review de novo. *Klinger v. Adams County Sch. Dist. No. 50*, 130 P.3d 1027, 1031 (Colo.2006). When construing a statute, we must determine the intent of the legislature. *State v. Nieto*, 993 P.2d 493, 500 (Colo.2000). Under the basic principles of statutory interpretation, we first determine whether the statutory language has a plain and unambiguous meaning. *People v. Yascavage*, 101 P.3d 1090, 1093 (Colo.2004).

In her final decision, the director made the following findings of fact and conclusion of law:

> 6. [Licensee,] itself or through its witness, did not refute or deny the evidence presented at the hearing regarding the sales of alcohol to minors—a violation of Section 12–47–901(1)(a.5) of the Code and failure to comply with the Code, the sale of drugs inside the premises—a violation of Colorado Code of Regulations 47–900, and the regular presence of over-served, drunk patrons coming out of and standing in front of [the establishment]—a violation of Section 12–47–901(5)(a) of the Code and Colorado Code of Regulations 47–900. The incidents demon-

strate that the record of [licensee] is such that a potential violation of the Code may occur if [the] license is renewed.

The statutes or regulations defining these violations contain the word "permit," and previous decisions by divisions of this court have held that the word "permit" in the Code requires a showing of actual or constructive knowledge. *See Full Moon Saloon, Inc. v. City of Loveland,* 111 P.3d 568, 569–70 (Colo.App.2005) (stating "that a licensee is not held to a **strict liability** standard and that some level of knowledge by the licensee must be established by the evidence"); *see also Costiphx Enterprises, Inc. v. City of Lakewood,* 728 P.2d 358, 360 (Colo.App.1986) (stating that even though undercover police officers met at a pub to place and pay off bets, there was no evidence that the owners or employees were aware of these activities and, therefore, "it cannot be said that plaintiff or its agents 'permitted' or 'authorized' the professional gambling as prohibited by the regulation"); *400 Club, Inc. v. Canjar,* 523 P.2d 141, 142 (Colo.App.1974) (not published pursuant to C.A.R. 35(f)); *Clown's Den, Inc. v. Canjar,* 33 Colo.App. 212, 215, 518 P.2d 957, 959 (1973).

Therefore, in our view, the director misconstrued and misapplied the law when she applied a **strict liability** standard to violations of the Code and regulations.

III. Violations

The director concluded that permitting the sale of narcotics in the establishment was a violation of C.C.R. 47–900; that the regular presence of overserved, drunken patrons inside and outside the establishment violated both section 12–47–901(5)(a), C.R.S.2009, and ***1082** C.C.R. 47–900; and that serving underage customers violated section 12–47–901(1)(a.5), C.R.S.2009. Further, the director concluded that these cumulative violations could be considered in denying renewal of the license. We disagree with the director as to the narcotics sale only.

Again, an issue of statutory interpretation is reviewed de novo. *Klinger,* 130 P.3d at 1031; *Cendant Corp. & Subsidiaries v. Department of Revenue,* 226 P.3d 1102, 1106 (Colo.App.2009) (applying de novo review to the Colorado Code of Regulations). Also, under C.R.C.P. 106(a)(4), judicial review of an administrative body's decision is limited to a determination of whether the body has exceeded its jurisdiction or abused its discretion. *Jayhawk Cafe,* 165 P.3d at 824.

[9][10] We may only determine if the record supports the decision, not whether we would arrive at a different decision. *City of Manitou Springs v. Walk,* 149 Colo. 43, 46, 367 P.2d 744, 746 (1961). "All reasonable doubt must be resolved in favor of the action of the licensing authority." *Id.* (citing *Bd. of County Comm'rs v. Salardino,* 138 Colo. 66, 329 P.2d 629 (1958)). A decision may be overturned for lack of competent evidence, meaning that the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority. *Givan,* 897 P.2d at 756.

A. Sale of Narcotics

[11] The Director concluded that permitting, or failing to prevent, illegal drug sales in the establishment was a proper basis for not renewing the license. The licensee argues that there is no competent evidence in the record to establish that it had actual or constructive knowledge of the narcotics transaction. We agree with the licensee.

On July 11, 2007, an undercover narcotics sale occurred inside the establishment. Denver then issued a public nuisance abatement program notice to the owner of the building in connection with this sale. The director found good cause for nonrenewal based, in part, on the narcotics sale and the nuisance abatement program, concluding that the licensee violated C.C.R. 47–900.

The record indicates that the drug transaction resulted from an undercover operation by the police, who targeted a drug dealer standing near the

establishment, not the establishment. The drug dealer, after agreeing to sell illegal drugs, requested that the investigating officer follow him into the establishment to complete the transaction, which occurred. The nuisance abatement program was issued solely in response to this incident.

At the administrative hearing, the investigating officer testified that he had no idea whether any of the employees or owners of the establishment had observed the transaction. In addition, the officer never asked the dealer if he had previously sold illegal drugs in the establishment. Further, the bartender on duty testified that she was not aware of the undercover narcotics transaction and was "shocked" when the other participating officers entered the establishment to arrest the dealer. Therefore, the evidence does not support any finding that the licensee was aware of, involved with, or permitted the sale of narcotics in the establishment. The evidence also failed to establish that the building owner had failed to comply with the terms of the nuisance abatement program.

C.C.R. 47–900 provides:

> Each person licensed under Article 46, 47, and 48 of Title 12, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner, and shall not *permit* on the licensed premises the serving or loitering of a visibly intoxicated person or habitual drunkard, nor shall the licensee, his employee or agent *knowingly permit* any activity or acts of disorderly conduct as defined by and provided for in Section 18–9–106, C.R.S., nor shall a licensee *permit* rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.

(Emphasis added.) As stated above, we agree with the prior case law which requires ***1083** actual or constructive knowledge in order for a licensee to violate this regulation.

[12] Actual knowledge is "[d]irect and clear knowledge." *Black's Law Dictionary* 888 (8th ed.2004). Constructive knowledge is knowledge that one exercising reasonable diligence should have. *See Full Moon Saloon,* 111 P.3d at 570; *see also State v. Moldovan,* 842 P.2d 220, 229 (Colo.1992). Indeed, constructive knowledge is defined as "[k]nowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person." *Black's Law Dictionary* at 888.

There is no evidence that the licensee or its employees were aware, or should have been aware, of the narcotics transaction. Thus, it cannot be said that the licensee or its employees had actual or constructive knowledge of the transaction. *See Costiphx Enterprises,* 728 P.2d at 360 (finding the plaintiff had no knowledge of illegal gambling when owners and employees were not aware of the illegal gambling).

B. Over–Service and Drunken Patrons

[13] The licensee argues that there was no competent evidence concerning the regular presence of over-served, intoxicated patrons loitering in front of the establishment, a violation of section 12–47–901(5)(a) and C.C.R. 47–900. We disagree.

The record includes at least twelve emergency dispatch calls regarding disturbances at the establishment or in its immediate vicinity. Further, it contains an analysis by the Denver Department of Safety of the emergency dispatch calls. The testimony of the licensee's employees confirmed that they made several emergency dispatch calls arising out of disturbances in the establishment. Additional testimony indicated that the licensee's employees regularly attempted to run off loiterers and remove drunk or disorderly patrons from the establishment. Neighbors of the establishment testified that they observed drug sales outside the establishment, numerous over-intoxicated individuals entering and exiting the establishment, and altercations outside the establishment.

The director found that the regular presence of over-served, drunken patrons coming out of and standing in front of the establishment was a violation of section 12–47–901(5)(a) and C.C.R. 47–900, and that permitting disturbances or activity offensive to the senses of the establishment's neighborhood violated C.C.R. 47–900.

C.C.R. 47–900 and section 12–47–901(5)(a) make it unlawful to sell, or permit the sale, of an alcoholic beverage to any person under the age of twenty-one years, a habitual drunkard, or a visibly intoxicated person.

[14] A lay witness who has had sufficient opportunity to observe the demeanor and conduct of another may express an opinion whether the latter was intoxicated. *Jones v. Blegen,* 161 Colo. 149, 420 P.2d 404 (1966). Further, the witnesses testified that the behavior was open and obvious. Although the evidence was in conflict, there was ample evidence—emergency dispatch calls and lay testimony—concerning behavior at the establishment.

Therefore, there was sufficient competent evidence to support a conclusion that the licensee violated the Code by failing to comply with C.C.R. 47–900, by over-serving patrons, and by permitting overly intoxicated patrons to remain within, and immediately outside, the establishment.

C. Serving Underage Customers

[15] The licensee does not dispute the incidents of serving underage customers, § 12–47–901(1)(a.5); nor does it dispute that it had constructive knowledge of the two sales of alcohol to underage customers. These violations may be imputed to it because an employee of the establishment through the exercise of reasonable care would have requested identification from the customer and thereby determined that the customer was not authorized to purchase or consume alcoholic beverages. *See Full Moon Saloon,* 111 P.3d at 571.

IV. Standards for Nonrenewal

Next, the licensee argues that the criteria for imposing a sanction for a violation of the Code must also be met before a violation may ***1084** be used as a basis for a good cause determination upon renewal. Further, it argues that if the criteria do not apply, then the statute is void for vagueness. We are not persuaded by either argument.

[16][17][18] Again, we review an issue of statutory interpretation is de novo. *Minh Le v. Colorado Dep't of Revenue,* 198 P.3d 1247, 1251 (Colo.App.2008). In addition, we review constitutional challenges de novo. *E–470 Public Highway Auth. v. Revenig,* 91 P.3d 1038, 1041 (Colo.2004); *Zelenoy v. Colorado Department of Revenue,* 192 P.3d 538, 542 (Colo.App.2008) (reviewing void for vagueness challenge de novo). A statute is presumed constitutional, and we should construe the statute to uphold its constitutionality whenever a reasonable and practical construction may be applied. *People v. Longoria,* 862 P.2d 266, 270 (Colo.1993). And, because a statute is presumed constitutional one challenging its validity has the burden of proving the statute to be unconstitutional beyond a reasonable doubt. *People v. Fuller,* 791 P.2d 702 (Colo.1990).

A. Sanctions Criteria

[19] The licensee argues that the renewal process under section 12–47–302(1) is parallel to the sanction process under section 12–47–601, C.R.S.2009, and, therefore, the director should apply the same criteria. We can find no support for this argument in the statute or in the cases construing or applying it.

To the best of our understanding, the licensee is arguing that, to support a nonrenewal, violations have to support a revocation under the parallel procedure. For instance, under the Colorado Code of Regulations a license may be suspended for five to thirty days for two sales of alcohol to a minor within a year (but the licensing authority may accept a fine instead). Division of Liquor Enforcement Rule 47–604(B), 1 Code Colo. Regs. 203–2. Not until a licensee has four sales to a minor within two years

may its license be revoked. Division of Liquor Enforcement Rule 47–604(D), 1 Code Colo. Regs. 203–2. Therefore, under the licensee's interpretation, a licensee would have had to make four sales to minors within two years in order for the director to deny renewal on that basis.

As noted, a division of our court held in *Squire Restaurant & Lounge* that when the director refused to renew a **liquor license** for good cause, absent regulations defining good cause, the licensee's due process rights were violated. 890 P.2d at 170–71. In response, the General Assembly defined good cause, as quoted above. The licensee argues that, by adopting a statutory definition, the General Assembly intended to implement the criteria that the Department of Excise and Licenses has developed involving the imposition of sanctions. "When the General Assembly has intended the criteria that apply to a decision whether to issue or revoke a license also to apply to a decision whether to renew a license, it has so indicated by the wording of the statute." *Id.* at 169.

[20][21] When discerning legislative intent, we look first and foremost to the language of the statute itself. When the legislature defines a term in the statute, that term must given its statutory meaning. *R.E.N. v. City of Colorado Springs,* 823 P.2d 1359, 1364 (Colo.1992).

[22] Here, the statute could not be clearer: The director "may refuse to renew any license for good cause, subject to judicial review." § 12–47–302(1). Good cause, as stated above, includes when a "licensee or applicant has violated, does not meet, or has failed to comply with *any* of the terms, conditions, or provisions of this article or any rules and regulations promulgated pursuant to this article." § 12–47–103(9)(a) (emphasis added). Under the plain language of the statute, any violation of a provision of the Code constitutes good cause for nonrenewal.

There is no provision in the Code linking the discretion of the licensing authority in nonrenewal proceedings to the provisions applicable to the issuance, suspension, or revocation of a license. *See Squire Restaurant & Lounge,* 890 P.2d at 168–69; *A.J.C. Enterprises, Inc. v. Pastore,* 473 A.2d 269, 274 (R.I.1984); *Rose Garden Restaurant Corp. v. Hostetter,* 32 A.D.2d 301, 304, 300 N.Y.S.2d 948, 951 (1969) ("but, in declining to renew a ***1085** license, the Authority is not limited to those causes which would justify a revocation").

[23] Further, the intent of the General Assembly is effectuated by considering the statutory scheme as a whole and giving a consistent, harmonious, and sensible effect to each individual section. *In re Regan,* 151 P.3d 1281, 1284 (Colo.2007).

Accordingly, we reject the licensee's argument that the sanctions criteria govern the decision not to renew.

B. Constitutionality

[24] Next, the licensee argues the statute is unconstitutionally vague because (1) there is no fair notice as to what violation would be good cause for nonrenewal and suspension; (2) there are no guidelines limiting the agency's discretion; and (3) thus there can be no meaningful judicial review. Further, the licensee argues that it makes no sense that the General Assembly would have intended that the same violation could support nonrenewal but not revocation. We are not persuaded.

[25][26][27] A statute that is unconstitutionally vague "constitutes a denial of due process of law under the United States and Colorado Constitutions." *People v. Moyer,* 670 P.2d 785, 789 (Colo.1983). The Fourteenth Amendment to the United States Constitution and article II, section 25 of the Colorado Constitution protect individuals from arbitrary governmental restrictions on property and liberty interests. *Mathews v. Eldridge,* 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976); *People v. Chavez,* 629 P.2d 1040 (Colo.1981). "In addressing due process issues, courts employ a bifurcated analysis requiring an initial delineation of the nature and extent of the asserted interest and, in

the event that interest is constitutionally protected, an evaluation of the adequacy of the challenged process." *Watso v. Colo. Dep't of Social Services,* 841 P.2d 299, 304 (Colo.1992) (citing *Chavez,* 629 P.2d at 1045).

[28] The Due Process Clauses of the federal and state constitutions protect individuals and entities from immediate governmental interference with present property interests, but not from possible governmental interference with potential property interests. *See Board of Regents v. Roth,* 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Therefore, a person claiming an unfair governmental deprivation of an interest in property must possess more than an anticipation of ownership of property. *Id.; Rich v. Secretary of Army,* 735 F.2d 1220, 1226 (10th Cir.1984).

[29] A **liquor license**, like any business or professional license, is a property right which is entitled to due process protection. *LDS, Inc. v. Healy,* 197 Colo. 19, 589 P.2d 490 (1979). However, a licensee has no vested right to renewal of a license. *Ficarra v. Dep't of Regulatory Agencies,* 849 P.2d 6, 17–18 (Colo.1993) (bail bond license); *Board of Comm'rs v. Buckley,* 121 Colo. 108, 117, 213 P.2d 608, 612 (1949) (**liquor license**); *Pomponio v. City Council,* 526 P.2d 681, 682 (Colo.App.1974) (not published pursuant to C.A.R. 35(f)) (**liquor license**). Therefore, a licensee has no property right in the renewal of a license and need not be provided procedural due process protections attendant to a property right. *Ficarra,* 849 P.2d at 19–20.

Accordingly, we reject the licensee's argument.

V.

Finally, the licensee argues that it was an abuse of discretion to deny renewal because, when applying the sanction criteria to the facts of this case, the director's decision not to renew the license was manifestly excessive. However, the nonrenewal of a **liquor license** is not a sanction.

VI. Conclusion

[30] The director concluded that there was good cause for not renewing the license based cumulatively on licensee's twice serving underage customers, serving intoxicated patrons, and permitting a drug transaction to occur on the premises. She did not, however, indicate whether one of these grounds, or which combination of less than all of these grounds, would constitute good cause. Therefore, the matter must be remanded for further consideration.

***1086** The order is affirmed as to the findings of serving underage customers and intoxicated patrons and is otherwise reversed, and the case is remanded to the district court with orders to remand to the director for further proceedings consistent with the views expressed in this opinion.

Judge BOORAS and Judge KAPELKE [FN*] concur.

FN* Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24–51–1105, C.R.S.2009.

Colo.App.,2010.
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111 P.3d 568
(Cite as: 111 P.3d 568)

C

Colorado Court of Appeals,
Div. V.
FULL MOON SALOON, INC., Plaintiff–Appellee,
v.
CITY OF LOVELAND, acting through its Local Liquor Licensing Authority, Defendant–Appellant.

No. 03CA2181.
March 24, 2005.

Background: Liquor licensee sought judicial review of suspension of **liquor license** by city licensing authority. The District Court, Larimer County, Williams, J., reversed suspension. City appealed.

Holdings: The Court of Appeals, Nieto, J., held that:
(1) licensee's constructive knowledge of violation of state liquor laws is sufficient basis for holding licensee responsible for permitting violation, and
(2) licensee in this case had constructive knowledge of violation.

Reversed and remanded.

West Headnotes

[1] Intoxicating Liquors 223 ⚿106(4)

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(B) Revocation or Forfeiture of Rights
223k106 In General
223k106(4) k. Violations of Law. Most Cited Cases

Liquor licensee's constructive knowledge of violation of state liquor laws is sufficient basis for holding licensee responsible for permitting violation, as requirement of actual knowledge would contravene strong public interest in allowing liquor licensing authorities maximum leeway to carry out their policing function. West's C.R.S.A. §§ 12–47–102, 12–47–601, 12–47–901(1)(a).

[2] Intoxicating Liquors 223 ⚿108.5

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(B) Revocation or Forfeiture of Rights
223k108 Proceedings
223k108.5 k. Evidence. Most Cited Cases

Evidence in record that 17-year-old girl came to liquor licensee's bar with two adult men, who ordered two drinks for girl, that waitress never asked girl for identification, and that police officer detected strong odor of alcohol on girl's breath immediately after she left the bar was sufficient to impute constructive knowledge of liquor law violation to licensee, as required to support **liquor license** suspension. West's C.R.S.A. §§ 12–47–102, 12–47–601, 12–47–901(1)(a).

[3] Administrative Law and Procedure 15A ⚿683

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak681 Further Review
15Ak683 k. Scope. Most Cited Cases

On appeal from a trial court's review of a determination by an administrative agency, appellate courts review the decision of the agency rather than the trial court's findings. Rules Civ.Proc., Rule 106(a)(4).

[4] Administrative Law and Procedure 15A ⚿763

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(D) Scope of Review in General

111 P.3d 568
(Cite as: 111 P.3d 568)

15Ak763 k. Arbitrary, Unreasonable or Capricious Action; Illegality. Most Cited Cases

Administrative Law and Procedure 15A ⟹788

15A Administrative Law and Procedure
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak788 k. Determination Supported by Evidence in General. Most Cited Cases

On review, a court may reverse an administrative agency's decision if there is no competent evidence to support its decision, that is, only if the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority. Rules Civ.Proc., Rule 106(a)(4).

[5] Intoxicating Liquors 223 ⟹108.10(8)

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(B) Revocation or Forfeiture of Rights
223k108 Proceedings
223k108.10 Review and Reinstatement
223k108.10(8) k. Questions of Fact and Findings. Most Cited Cases

In review of **liquor license** suspension proceedings, neither the Court of Appeals nor any other court may substitute its judgment for that of the local licensing authority when there is any evidence in the record that supports its conclusion. West's C.R.S.A. § 12–47–601.

*569 Law Offices of John O. Walker, P.C., John O. Walker, Fort Collins, Colorado, for Plaintiff–Appellee.

Nathan, Bremer, Dumm & Myers, P.C., J. Andrew Nathan, Andrew J. Fisher, Denver, Colorado, for Defendant–Appellant.

NIETO, J.

The City of Loveland appeals the judgment reversing the City's suspension of Full Moon Saloon, Inc.'s **liquor license**. We reverse and remand for reinstatement of the suspension.

Full Moon operated a bar under the name Night Shotz. Pursuant to § 12–47–601, C.R.S.2004, the City sought to revoke its **liquor license**, alleging that it had provided an alcohol beverage to a seventeen-year-old girl in violation of § 12–47–901(1)(a), C.R.S.2004.

At the hearing before the City's Liquor Licensing Authority (the Authority), a police officer testified to the following facts. He stopped a vehicle for a traffic violation and found it occupied by two adult men and a seventeen-year-old girl. The girl, who had a strong odor of an alcohol beverage on her breath and who did not appear to be twenty-one years of age, told him they had just come from the Night Shotz bar where she had consumed four shots of an alcohol beverage. The girl told the officer that she had gone to the bar with the two adults, and they remained there for approximately two hours. None of the bar employees asked her for identification to verify her age. She said one of the men ordered two shots for her, and she took two additional shots from the table where the party was seated. One of the men verified that he had purchased two shots for the girl.

The Authority found the officer to be credible, and it relied on the statements of the girl and the men as related by the officer. Contrary evidence was presented at the hearing, but the Authority did not find those witnesses credible.

The Authority found the girl had consumed alcohol beverages at the bar, but because Full Moon did not knowingly provide the drinks to her, it did not suspend Full Moon's license. After the City filed a motion for reconsideration, the Authority reconsidered its ruling and suspended Full Moon's license. The Authority found that it had mistakenly required a showing that Full Moon had actual

knowledge that alcohol beverages were provided for the girl when the statute imposed **strict liability** . Conflating the concepts of "**strict liability**" and "knowing conduct," the Authority stated that "although the violation is a **strict liability** violation, there is a requirement that the licensee have imputed knowledge." The Authority went on to find that Full Moon's knowledge could be imputed from the evidence.

Full Moon appealed to the district court pursuant to C.R.C.P. 106(a)(4). The district court found the offense was not a **strict liability** offense and that at a minimum, constructive knowledge was required. The court concluded that the evidence did not support a finding of constructive knowledge and overturned the suspension.

I.

[1] Initially, we address the Authority's holding that in this license suspension proceeding, § 12–47–901(1)(a) imposes **strict liability** on the licensee. We agree with the district court that a licensee is not held to a **strict liability** standard and that some level of knowledge by the licensee must be established by the evidence. However, this ruling by the Authority, although erroneous, was harmless because the Authority did not hold Full Moon to a **strict liability** standard. Instead, the Authority found that the evidence at the hearing was sufficient to give Full Moon's employee constructive knowledge of the violation, and this knowledge was imputed to Full Moon.

***570** Section 12–47–601 allows a local licensing authority to suspend a **liquor license** for any violation of the Colorado Liquor Code, § 12–47–101, et seq., C.R.S.2004.

Section 12–47–901(1)(a) makes it unlawful "[t]o sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of any alcohol beverage to or for any person under the age of twenty-one years."

Both parties rely on Kurt G. Stiegelmeier, *Suspension or Revocation of* **Liquor Licenses** *for Offensive Conduct,* 29 Colo. Law. 77, 78 (Sept.2000), and agree that constructive knowledge of a violation is sufficient to hold a licensee responsible for permitting the violation. We also agree for the following reasons.

The holder of a **liquor license** has an "affirmative responsibility" to conduct the business, and see that his or her employees conduct the business, in compliance with the law. *Clown's Den, Inc. v. Canjar,* 33 Colo.App. 212, 215, 518 P.2d 957, 959 (1973). "[T]he consumption of liquor is believed to present a threat to public health and welfare," and therefore, the sale and use of liquor are subject to substantial regulation. *Mr. Lucky's, Inc. v. Dolan,* 197 Colo. 195, 197, 591 P.2d 1021, 1023 (1979). This strong public interest requires that liquor licensing authorities have "maximum leeway in carrying out their policing function." *Costiphx Enterprises, Inc. v. City of Lakewood,* 728 P.2d 358, 361 (Colo.App.1986). If actual knowledge by the licensee or his or her employees were required, then responsibility could be avoided by ignoring activities occurring in the establishment; ignorance would be given a premium. This standard would make enforcement of the Liquor Code exceedingly difficult and would be contrary to the legislative intent expressed in § 12–47–102, C.R.S.2004 (act is for economic and social welfare and for protection of the public's health, peace, and morals).

As relevant here, licensees, their employees, and their agents violate § 12–47–901(1)(a) if they "permit the sale, serving, giving, or procuring of any alcohol beverage" to or for a person under the age of twenty-one years. The word "permit" connotes affirmative or knowing conduct. Thus, licensees and their employees and agents "permit" such conduct if they have actual knowledge of the violation or have constructive knowledge that it is occurring.

Constructive knowledge may be inferred if the conduct occurs openly, such that a reasonable person would observe it. If knowledge of the prohib-

ited conduct could have been obtained through the exercise of reasonable care and diligence, constructive knowledge may be inferred. *See* Stiegelmeier, *supra* (citing cases from other jurisdictions).

Applying a constructive knowledge standard does not place an undue burden on the licensee because constructive knowledge requires only reasonable care and diligence and does not require extraordinary vigilance. Constructive knowledge means "[k]nowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person." *Black's Law Dictionary* 876 (7th ed.1999); *see also Morgan v. Bd. of Water Works,* 837 P.2d 300 (Colo.App.1992) (if in the exercise of ordinary diligence a party should have known a fact, it will be deemed to have knowledge).

Our conclusion that constructive knowledge of liquor code violations is sufficient to hold a licensee responsible for permitting the violation is consistent with cases from other jurisdictions. *See Spitz v. Mun. Court,* 127 Ariz. 405, 621 P.2d 911 (1980) (licensee is deemed to have constructive knowledge of the age of underage buyer if licensee provides alcohol to the minor and fails to follow certain procedures); *Laube v. Stroh,* 2 Cal.App.4th 364, 3 Cal.Rptr.2d 779 (1992) (to suspend **liquor license,** evidence must be presented that licensee had either actual or constructive knowledge of activity); *Pinacoteca Corp. v. Dep't of Bus. Regulation,* 580 So.2d 881 (Fla.Dist.Ct.App.1991) (where activity is persistent and recurring, licensee's knowledge of the activity may be inferred); *State v. Engberg,* 109 Idaho 530, 708 P.2d 935 (Ct.App.1985) (violation may be found if licensee had constructive knowledge of the prohibited activity); *Town & Country Lanes, Inc. v. Liquor Control Comm'n,* 179 Mich.App.*571 649, 446 N.W.2d 335 (1989) (licensee violated **liquor license** rule by failing to exercise reasonable diligence to ascertain the age of underage customer); *Leake v. Sarafan,* 35 N.Y.2d 83, 358 N.Y.S.2d 749, 315 N.E.2d 796 (1974) (to sustain a violation, licensee must have knowledge of the activity or the opportunity through reasonable diligence to acquire knowledge of the alleged acts); *Smith v. Bd. of Liquor Control,* 96 Ohio App. 396, 121 N.E.2d 920 (1954) (licensee must have actual or constructive knowledge of prohibited activity) *Tex. Alcoholic Beverage Comm'n v. Sanchez,* 96 S.W.3d 483 (Tex.App.2002) (to suspend **liquor license,** evidence must be presented that licensee had either actual or constructive knowledge of activity); *Reeb, Inc. v. Wash. State Liquor Control Bd.,* 24 Wash.App. 349, 600 P.2d 578 (1979) (to "permit" a violation, licensee must have actual or constructive knowledge of the activity).

II.

[2] The City contends the district court erred in reversing the suspension because evidence at the hearing supported the Authority's finding that Full Moon had constructive knowledge of the underage girl's actions. We agree.

[3][4] On appeal from a C.R.C.P. 106(a)(4) proceeding, appellate courts review the decision of the agency rather than the trial court's findings. On review, a court may reverse an administrative agency's decision if "there is no competent evidence to support its decision, that is, only if 'the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.' " *Droste v. Bd. of County Comm'rs,* 85 P.3d 585, 590 (Colo.App.2003) (quoting *City of Colorado Springs v. Bd. of County Comm'rs,* 895 P.2d 1105, 1109–10 (Colo.App.1994), and *Ross v. Fire & Police Pension Ass'n,* 713 P.2d 1304, 1309 (Colo.1986)).

[5] We will not upset the decision of the local licensing authority unless it is based upon evidence that could only lead reasonable persons to reach a conclusion contrary to that decision. "In review of **liquor license** suspension proceedings neither this court nor any other court may substitute its judgment for that of the local licensing authority when there is any evidence in the record that supports its conclusion." *DiManna v. Kalbin,* 646 P.2d 403, 404

(Colo.App.1982).

Here, there was ample evidence in the record to support a finding that Full Moon's employee had constructive knowledge that alcohol beverages were being served or given to a girl under twenty-one years of age. The evidence relied on by the Authority showed the following. The seventeen-year-old girl, who looked younger than twenty-one years old, came to the bar with two adult men. They sat at a table in the bar and remained for two hours. The adults ordered drinks for themselves and ordered two drinks for the girl, which she consumed. The waitress never asked her for identification. Immediately after leaving the bar, the girl spoke with an officer, who testified that during a short conversation with the girl, he detected a strong odor of alcohol on her breath.

This evidence was sufficient for the Authority to infer that the employee of the bar through the exercise of reasonable diligence could have determined that an underage person was consuming alcohol beverages, and therefore, the employee had constructive knowledge of the violation. Accordingly, we conclude that the district court erred in reversing the Authority's order of suspension.

The judgment is reversed, and the case is remanded to the district court with directions to reinstate the Authority's decision.

Judge VOGT and Judge HAWTHORNE concur.

Colo.App.,2005.
Full Moon Saloon, Inc. v. City of Loveland ex rel. Local Liquor Licensing Authority
111 P.3d 568

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Westlaw Delivery Summary Report for VOLKMAN,THOMAS

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(Cite as: 728 P.2d 358)

C

Colorado Court of Appeals,
Div. III.

COSTIPHX ENTERPRISES, INC., Plaintiff-Appellant,
v.
The CITY OF LAKEWOOD; the Lakewood Liquor and Fermented Malt Beverage Licensing Authority; State of Colorado, and Alan N. Charnes, Executive Director of the Department of Revenue, State of Colorado, Defendants-Appellees.

No. 84CA0978.
July 3, 1986.

Liquor authority suspended liquor license, and licensee appealed. The District Court, Jefferson County, Joseph P. Lewis, J., affirmed, and licensee appealed. The Court of Appeals, Metzger, J., held that: (1) finding that licensee authorized or permitted professional gambling on its license premises was not supported by evidence, and (2) evidence was sufficient to establish that liquor was served to intoxicated persons.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Intoxicating Liquors 223 ⚿108.10(8)

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(B) Revocation or Forfeiture of Rights
223k108 Proceedings
223k108.10 Review and Reinstatement
223k108.10(8) k. Questions of fact and findings. Most Cited Cases

In order for reviewing court to set aside decision by liquor authority, decision must be without substantial evidentiary support in record.

[2] Intoxicating Liquors 223 ⚿108.5

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(B) Revocation or Forfeiture of Rights
223k108 Proceedings
223k108.5 k. Evidence. Most Cited Cases

Finding by liquor authority that pub owner permitted professional gambling on premises was not supported by evidence that professional bookie met undercover police officer at pub at suggestion of officer as matter of convenience, and that neither owners nor employees of pub were aware of these activities.

[3] Intoxicating Liquors 223 ⚿1

223 Intoxicating Liquors
223I Power to Control Traffic
223k1 k. Nature and grounds. Most Cited Cases

Liquor control is imbued with especially strong public interest, and liquor licensing authorities need maximum leeway in carrying out their policing function.

[4] Constitutional Law 92 ⚿4289

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)12 Trade or Business
92k4266 Particular Subjects and Regulations
92k4289 k. Intoxicating liquors. Most Cited Cases
(Formerly 92k287.2(3))

Test whether liquor licensee's procedural due process rights are violated by action of liquor licensing authority is one of fundamental fairness.

U.S.C.A. Const.Amend. 14.

[5] Intoxicating Liquors 223 ⚿108.2

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(B) Revocation or Forfeiture of Rights
223k108 Proceedings
223k108.2 k. Notice. Most Cited Cases

Pub owner was given sufficient notice concerning allegations of serving liquor to intoxicated persons where each allegation specifically included date of occurrence and name of patron or name of bartender involved, even though liquor authority failed to name many of persons whom pub's employees allegedly served.

[6] Intoxicating Liquors 223 ⚿108.5

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(B) Revocation or Forfeiture of Rights
223k108 Proceedings
223k108.5 k. Evidence. Most Cited Cases

Finding by liquor authority that alcoholic beverages were served to intoxicated persons was supported by undercover agent's testimony that she saw alcohol served in each recorded instance, as there was no evidence that nonalcoholic beverages were served.

[7] Intoxicating Liquors 223 ⚿108.9

223 Intoxicating Liquors
223IV Licenses and Taxes
223IV(B) Revocation or Forfeiture of Rights
223k108 Proceedings
223k108.9 k. Hearing, reference, findings, and judgment; penalties. Most Cited Cases

Limitation in cross-examination by chairman of liquor authority was not abuse of discretion where undercover agent testified that alcoholic beverage was served, but that she could not recall exact type of liquor served, and pub owner's counsel indicated that he intended to go over her testimony again.

[8] Constitutional Law 92 ⚿4289

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)12 Trade or Business
92k4266 Particular Subjects and Regulations
92k4289 k. Intoxicating liquors. Most Cited Cases
(Formerly 92k287.2(3))

Liquor license is property right which is entitled to due process protection, but there is no unlimited right to liquor license, and once granted, that license is always subject to valid regulations under which it was issued.

[9] Administrative Law and Procedure 15A ⚿390.1

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(C) Rules, Regulations, and Other Policymaking
15Ak390 Validity
15Ak390.1 k. In general. Most Cited Cases
(Formerly 15Ak390)

Regulation is void for vagueness if its prohibitions are not sufficiently defined so as to give fair warning of type of conduct that is prohibited, and if persons of common intelligence must guess at law's meaning and differ as to its application, law must fail.

[10] Constitutional Law 92 ⚿3905

92 Constitutional Law
92XXVII Due Process
92XXVII(B) Protections Provided and

Deprivations Prohibited in General
92k3905 k. Certainty and definiteness; vagueness. Most Cited Cases
(Formerly 92k251.4)

If one is deprived of liberty or property for violating a statutory prohibition, due process requires that prohibition be explicit enough to allow for meaningful judicial review.

[11] Intoxicating Liquors 223 ⚿15

223 Intoxicating Liquors
223II Constitutionality of Acts and Ordinances
223k15 k. Licensing and regulation. Most Cited Cases

Liquor code regulation that prohibited serving alcoholic beverages to "apparently intoxicated person" is susceptible of consistent interpretation by person of ordinary intelligence and is not unconstitutionally vague.

[12] Intoxicating Liquors 223 ⚿15

223 Intoxicating Liquors
223II Constitutionality of Acts and Ordinances
223k15 k. Licensing and regulation. Most Cited Cases

Liquor code regulation prohibiting serving of alcoholic beverages to "apparently intoxicated person" was not impermissibly vague on grounds that it was in danger of being enforced arbitrarily and capriciously.

***359** Mangan & Katz, Lawrence Katz, Denver, for plaintiff-appellant.

Gorsuch, Kirgis, Campbell, Walker & Grover, Paul F. Kennebeck, Denver, for defendants-appellees City of Lakewood and The Lakewood Liquor and Fermented Malt Beverage Licensing Authority.

Duane Woodard, Atty. Gen., Charles B. Howe, Chief Deputy Atty. Gen., Richard H. Forman, Sol. Gen., Robert L. Patterson, Asst. Atty. Gen., Denver, for defendants-appellees State of Colo. and Alan N. Charnes.

METZGER, Judge.

Plaintiff, Costiphx Enterprises, Inc., appeals the judgment entered in a C.R.C.P. 106(a)(4) proceeding affirming the action of the Lakewood Liquor and Fermented Malt Beverage Licensing Authority (Liquor Authority) in suspending plaintiff's liquor license for permitting gambling on its premises***360** and for serving liquor to intoxicated persons. We affirm in part, reverse in part, and remand with directions.

From January 1983 until June 1983, the Lakewood Department of Public Safety conducted an undercover surveillance operation in Peabody's Pub, which was owned and operated by plaintiff. As a result of this investigation, a complaint was filed against plaintiff alleging violations of the Colorado Liquor Code relating to permitting gambling on the premises and serving alcoholic beverages to intoxicated persons.

The Liquor Authority conducted two hearings during October of 1983. It found that plaintiff had violated two Colorado Liquor Code Regulations, 1 Code Colo.Reg. 47–105.1 (improper conduct of the establishment by selling liquor to intoxicated persons) and 1 Code Colo.Reg. 47–128.10 (permitting gambling on the premises). Plaintiff's liquor license was suspended for 60 days, but 48 days of the suspension were deferred for one year pending proof of any future violations.

Plaintiff then instituted this C.R.C.P. 106(a)(4) action for review of the Liquor Authority's decision, and the trial court upheld the Liquor Authority's action. This appeal followed.

I.

Professional Gambling

Plaintiff first contends that there is no competent evidence in the record to support the Liquor Authority's findings of fact that plaintiff authorized or

permitted professional gambling on its licensed premises in violation of Colorado Liquor Code Regulation 47.128.10. We agree.

[1] In order for a reviewing court to set aside a decision by an administrative agency, the decision must be without substantial evidentiary support in the record. *Brownlee v. State,* 686 P.2d 1372 (Colo.App.1984). This principle is applicable in liquor licensing proceedings. *See Noe v. Dolan,* 197 Colo. 32, 589 P.2d 483 (1979).

Defendants concede that the majority of instances of gambling relied upon by the Liquor Authority to revoke plaintiff's liquor license are "social gambling" as opposed to "professional gambling." They agree that the definition of gambling contained in § 18–10–102(2)(d), C.R.S. (1978 Repl.Vol. 8), which excludes "social gambling," and which has been applied to the Colorado Liquor Code, prevents the use of these instances of "social gambling" to prove a violation of the regulation in question. *See Brownlee v. State, supra.*

Defendants contend, nevertheless, that the record contains evidence of professional gambling activities sufficient to show a violation of the regulation. We disagree.

[2] The only evidence concerning professional gambling shows that a professional bookie met an undercover police officer at Peabody's Pub in order to place and pay off bets. The undercover officer suggested that each meeting take place at Peabody's as a matter of convenience. However, there is no evidence that the owners or any employees of Peabody's were aware of these activities. Consequently, it cannot be said that plaintiff or its agents "permitted" or "authorized" the professional gambling as prohibited by the regulation. *See Clown's Den, Inc. v. Canjar,* 33 Colo.App. 212, 518 P.2s 957 (1973). Therefore, since the record contains no evidence to support the Liquor Authority's conclusion that plaintiff violated Colorado Liquor Code Regulation 47.128.10, the trial court's judgment is reversed as to that issue.

II.

Plaintiff next contends that it was given insufficient notice concerning allegations of serving liquor to intoxicated persons because the Liquor Authority failed to name many of the persons whom plaintiff's employees allegedly served. Thus, it argues, its procedural due process rights were violated. We disagree.

[3][4] Liquor control is imbued with an especially strong public interest. Liquor ***361** licensing authorities need maximum leeway in carrying out their policing function. *Mr. Lucky's Inc. v. Dolan,* 197 Colo. 195, 591 P.2d 1021 (1979). The test whether a licensee's procedural due process rights have been violated is one of fundamental fairness. *Chroma Corp. v. Adams County,* 36 Colo.App. 345, 543 P.2d 83 (1975).

[5] We conclude that the notice sufficiently advised plaintiff of the allegations to enable it to defend against them. Each allegation specifically included the date of the occurrence in question. As well, each allegation either stated the name of the patron or the name of the bartender involved.

Under these circumstances, we conclude that the notice was legally sufficient to afford plaintiff its procedural due process rights. *See Aristocratic Restaurant of Massachusetts, Inc. v. Alcoholic Beverages Control Commission,* 374 Mass. 547, 374 N.E.2d 1181 (1978); *Loyal Order of Moose, Inc. v. Mayor and Members of Council of City of Dalton,* 246 Ga. 298, 271 S.E.2d 354 (1980).

III.

Plaintiff further contends that there was no competent evidence to support the Liquor Authority's findings of fact that alcoholic beverages were served to intoxicated persons. Again, we disagree.

[6] Plaintiff argues that the undercover agent's testimony was insufficient as to this issue because she could not recall the type of alcohol served.

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(Cite as: 728 P.2d 358)

Thus, plaintiff asserts, the evidence is insufficient to show that the allegedly intoxicated persons were served alcoholic beverages as opposed to non-alcoholic beverages. We reject this argument because the record reflects that the agent testified that she saw alcohol served in each instance, and there is no evidence that non-alcoholic beverages were served.

IV.

Plaintiff next contends that the Chairman of the Liquor Authority erred when he curtailed cross-examination of the undercover agent. We disagree.

Cross-examination is a fundamental right of our judicial system. However, its scope may be restricted within the sound discretion of the tribunal. *Puncec v. City & County of Denver*, 28 Colo.App. 542, 475 P.2d 359 (1970). Reasonable limitation in cross-examination does not violate constitutional protections, especially if the cross-examination is repetitious and nonproductive. *Denver Symphony Ass'n v. Industrial Commission*, 34 Colo.App. 343, 526 P.2d 685 (1974).

Plaintiff's attorney was permitted to cross-examine the undercover agent concerning three separate occurrences of liquor being served to an intoxicated person. In each instance, the undercover agent testified that an alcoholic beverage was served, but she could not recall the exact type of liquor served. Plaintiff's counsel stated that he intended to show this lack of definiteness in her testimony as to each occurrence. Eventually, the chairman of the Liquor Authority told plaintiff's attorney, "I think you have dwelled [on this subject] long enough."

[7] We conclude that the chairman acted within his discretion in limiting the cross-examination of the undercover agent. Under the circumstances, the agent's lack of specific recall had been demonstrated.

V.

Finally, plaintiff challenges the validity of Colorado Liquor Code Regulation 47–105.1A, arguing that it is vague and, thus, falls short of the standards of fair warning and meaningful judicial review set out in *Continental Liquor Co. v. Kalbin*, 43 Colo.App. 438, 608 P.2d 353 (1977). It asserts that the application of that regulation denied plaintiff its right to due process. We reject this contention.

[8] A liquor license is a property right which is entitled to due process protection. *LDS, Inc. v. Healy*, 197 Colo. 19, 589 P.2d 490 (1979). However, there is no unlimited right to a liquor license, and once granted, ***362** that license is always subject to valid regulations under which it was issued. *New Safari Lounge, Inc. v. City of Colorado Springs*, 193 Colo. 428, 567 P.2d 372 (1977).

[9] In analyzing a regulation for vagueness, we must apply the two-part test set out in *LDS, Inc. v. Healy, supra.* First, a regulation is void for vagueness if its prohibitions are not sufficiently defined so as to give fair warning of the type of conduct that is prohibited. *LDS, Inc. v. Healy, supra.* Thus, if persons of common intelligence must guess at the law's meaning and differ as to its application, the law must fail. *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1926); *see also Mr. Lucky's v. Dolan, supra.*

[10] Second, a statute or regulation is void for vagueness if it contains no explicit standards for application such that a danger of arbitrary and capricious enforcement exists. If one is deprived of liberty or property for violating a statutory prohibition, due process requires that the prohibition be explicit enough to allow for meaningful judicial review. *LDS, Inc. v. Healy, supra.*

The pertinent portions of Colorado Liquor Code Regulation 47–105.1A are as follows:

> "Each person licensed under this Article ... shall not permit on his licensed premises the serving ... of an apparently intoxicated person...."

The gravamen of plaintiff's contention, as we

perceive it, seems to be that the phrase "apparently intoxicated person" is not susceptible of consistent interpretation by persons of ordinary intelligence.

[11] In *Jones v. Blegen,* 161 Colo. 149, 420 P.2d 404 (1966), our supreme court held that a lay witness who has had sufficient opportunity to observe the demeanor and conduct of another may express an opinion whether the latter was intoxicated. CRE 701, which allows opinion testimony by non-expert witnesses, leads to the same result. Since a non-expert witness may render an opinion concerning the intoxication of another, it logically follows that a regulation which prohibits serving alcoholic beverages to "an apparently intoxicated person" specifies, with the requisite degree of certainty, the proscribed activity for persons of common intelligence. *See Citizens for Free Enterprise v. Department of Revenue,* 649 P.2d 1054 (Colo.1982).

[12] We also conclude that there is no danger of arbitrary and capricious enforcement of this regulation. In *Brownlee v. State, supra,* we concluded that the due process rights of a liquor licensee can be protected adequately by judicial review.

VI.

The penalty of 60 days suspension was imposed based upon the Liquor Authority's determination that plaintiff had violated two regulations, one concerning gambling and one concerning serving alcohol to intoxicated persons. Because only the latter determination has been upheld, considerations of fundamental fairness dictate that the Liquor Authority be given the opportunity to reexamine its penalty. *See Air Pollution Variance Board v. Western Alfalfa Corp.,* 191 Colo. 455, 553 P.2d 811 (1976).

The trial court's judgment is affirmed except as it pertains to the alleged violation of the gambling regulation; in that regard, the judgment is reversed. The cause is remanded to the trial court with directions to remand to the Liquor Authority for a hearing on the penalty and entry of an appropriate order.

TURSI and BABCOCK, JJ., concur.

Colo.App.,1986.
Costiphx Enterprises, Inc. v. City of Lakewood
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Effective: March 7, 2014

West's Colorado Revised Statutes Annotated Currentness
Title 18. Criminal Code (Refs & Annos)
Article 9. Offenses Against Public Peace, Order, and Decency (Refs & Annos)
Part 1. Public Peace and Order
§ 18-9-106. Disorderly conduct

(1) A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:

(a) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or

(b) Deleted by Laws 2000, Ch. 171, § 39, eff. July 1, 2000.

(c) Makes unreasonable noise in a public place or near a private residence that he has no right to occupy; or

(d) Fights with another in a public place except in an amateur or professional contest of athletic skill; or

(e) Not being a peace officer, discharges a firearm in a public place except when engaged in lawful target practice or hunting or the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States; or

(f) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.

(2) Repealed by Laws 2006, Ch. 308, § 21, eff. June 1, 2006.

(3)(a) An offense under paragraph (a) or (c) of subsection (1) of this section is a class 1 petty offense; except that, if the offense is committed with intent to disrupt, impair, or interfere with a funeral, or with intent to cause severe emotional distress to a person attending a funeral, it is a class 2 misdemeanor.

(b) An offense under paragraph (d) of subsection (1) of this section is a class 3 misdemeanor.

(c) An offense under paragraph (e) or (f) of subsection (1) of this section is a class 2 misdemeanor.

CREDIT(S)

Amended by Laws 1981, S.B.154, § 1; Laws 2000, Ch. 171, §§ 11, 39, eff. July 1, 2000; Laws 2006, Ch. 262, § 3, eff. May 26, 2006; Laws 2006, Ch. 308, § 21, eff. June 1, 2006; Laws 2014, Ch. 22, § 1, eff. March 7, 2014.

Current through the Second Regular Session of the Sixty-Ninth General Assembly (2014)

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(1) Completion of a course is not required before the test is administered

(2) Failure to pass the first administration of the test shall require attendance at either a recertication course or an initial certification training program

b) Documented attendance and completion of a recertification course

c) Documented attendance and completion of an initial certification training program

3) Recertification course

a) The curriculum must cover any and all changes in the law or regulations that effect the curriculum contained in the initial certification program

b) The course must provide a refresher on the following topics:

(1) Sales to intoxicated persons

(2) Sales to minors

(3) Legal sales hours

(4) Civil and criminal liabilities for law violations

c) No minimum instruction time or testing requirements shall apply

Regulation 47-700 . Inspection of the Licensed Premises.

A. The licensed premises, including any places of storage where alcohol beverages are stored or dispensed, shall be subject to inspection by the State or Local Licensing Authorities and their investigators, or peace officers, during all business hours and all other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by licensees, access shall only be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee, such area shall be made available for inspection without delay; and upon request by authorized representatives of the licensing authority or peace officers, such licensee shall open said area for inspection.

B. Each licensee shall retain all books and records necessary to show fully the business transactions of such licensee for a period of the current tax year and the three prior tax years.

Regulation 47-900. Conduct of Establishment.

A. Orderliness, loitering, serving of intoxicated persons.

Each person licensed under Article 46, Article 47, and Article 48 of Title 12, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner, and shall not serve a known habitual drunkard or any person who displays any visible signs of intoxication, nor shall they permit a known habitual drunkard or any person who displays any visible signs of intoxication to remain on the licensed premises without an acceptable purpose, nor shall the licensee, his employee or agent knowingly permit any activity or acts of disorderly conduct as defined by and provided for in Section 18-9-106, C.R.S., nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.

Debra Kemp - Copies of legal authority

From: DeLayne Merritt
To: Tom@shgvlaw.com; michael@gjlawyer.com
Date: 11/7/2014 9:49 AM
Subject: Copies of legal authority
CC: Debra Kemp; Jamie Beard; John Shaver; Meghan Woodland
Attachments: Clowns_Den_Inc_vs__Canjar.pdf; 400_Club_Inc_vs__Canjar.pdf

Hearing Officer Grattan & Mr. Volkmann:

Please find attached the legal authority the City would like considered as a response to the authority provided by Mr. Volkmann on behalf of MZ Entertainment, LLC. I have scanned and attached two cases for both of your review and reference. I have not briefed nor summarized the information at the direction of Hearing Officer Grattan.

Sincerely,
DeLayne Merritt

DeLayne Merritt
Staff Attorney
City Attorney's Office
250 North 5th Street
Grand Junction, CO 81501
(970) 244-1457

LexisNexis

User Name: Jamie Beard
Date and Time: Nov 06, 2014 5:45 p.m. EST
Job Number: 14491374

Document(1)

1. Clown's Den, Inc. v. Canjar, 33 Colo. App. 212
   Client/Matter: -None-
   Narrowed by:

Content Type	Narrowed by
Cases	Court: Colorado

Clown's Den, Inc. v. Canjar

Court of Appeals of Colorado, Division Two
December 18, 1973, Decided
No. 73-042

Reporter
33 Colo. App. 212; 518 P.2d 957; 1973 Colo. App. LEXIS 711

The Clown's Den, Inc., a Colorado corporation v. George A. Canjar, Director of Excise and Licenses, City and County of Denver

Subsequent History: [***1] Rehearing Denied January 8, 1974. Certiorari Denied February 25, 1974.

Prior History: *Appeal from the District Court of the City and County of Denver, Honorable John Brooks, Jr., Judge.*

Disposition: *Affirmed.*

Core Terms

establishment, license, Liquor, patron, regulation, actual knowledge, violation of a regulation, activities, employees, licensee, beverages

Case Summary

Procedural Posture
Plaintiff *establishment* appealed a judgment of the District Court, City and County of Denver (Colorado), which affirmed the order of respondent, Director of Excise and Licenses of the City and County of Denver, suspending the *establishment*'s hotel and restaurant liquor license for a violation of Colo. Dep't Rev. Reg. No. 19B.

Overview
A male patron of the *establishment* was approached by a woman who solicited the patron for the purchase of a bottle of champagne. After the purchase, the patron was enticed by two women to a secluded portion of the *establishment* where he and the females engaged in sexual intercourse. Thereafter, one of the women directed the patron to see the manager of the *establishment* who gave him a bill, the sum of which amounted to the total of a certified check that the patron had in his possession. The Director found that the *establishment* had violated Regulation 19B. The trial court affirmed. On appeal, the *establishment* argued that there was insufficient evidence that it permitted the *conduct*, because actual knowledge had not been proven. The court held that to have permitted a violation of the regulation, the *establishment* need not have had actual knowledge of the specific activities constituting the violation. Since the activities occurred with the implicit knowledge of the bartender, which knowledge was imputed to the *establishment*, it was not necessary that actual knowledge be pleaded or proved to substantiate a charge that the *establishment* had permitted the prohibited activity.

Outcome
The judgment of the trial court was affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Disruptive *Conduct* > Loitering, Panhandling, Prowling & Vagrancy > General Overview

Governments > Local Governments > Licenses

Jamie Beard

HN1 Colo. Dep't Rev. Reg. No. 19B reads as follows: Each licensee shall ***conduct*** his ***establishment*** in a decent, orderly and respectable manner and shall not permit within or upon the licensed premises the loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise, or other disturbance or activity offensive to the senses of the average citizen or to the residents of the neighborhood in which the ***establishment*** is located.

Governments > Legislation > Interpretation

HN2 When a statutory term may be used in different senses, it is permissible for the court to apply the definition which will best effectuate the legislative intent in the enactment of the law.

Governments > Local Governments > Licenses

HN3 The Colorado Supreme Court stated that the intent and primary purpose of the Colorado Liquor Code was to authorize, subject to regulation and safeguards, the sale and consumption of intoxicating liquors, and, at the same time, to "completely outlaw and eradicate" the vices and ill effects which had come to be associated with the sale of such beverages. The court concluded that in view of that purpose, the Liquor Code was not to be subjected to a strained or narrow construction. Under this clear expression of legislative intent, The Court of Appeals of Colorado, Second Division held that to have "permitted" a violation of the regulation, the plaintiff need not have had actual knowledge of the specific activities constituting the violation.

Criminal Law & Procedure > Criminal Offenses > Alcohol Related Offenses > General Overview

Criminal Law & Procedure > ... > Alcohol Related Offenses > Distribution & Sale > General Overview

Criminal Law & Procedure > ... > Alcohol Related Offenses > Distribution & Sale > Elements

Governments > Local Governments > Licenses

HN4 The holder of a license for the sale of alcoholic beverages has an affirmative responsibility to see that his business is not ***conducted*** by his employees, or by his employees in concert with other persons, in violation of the law.

Administrative Law > Judicial Review > Reviewability > Factual Determinations

HN5 Where a fact alleged is not a necessary ingredient to the offense, it need not be proved. Therefore, unnecessary allegations in an order to show cause before an administrative licensing authority can be disregarded.

Syllabus

Finding that liquor licensee, in violation of regulation, had permitted certain improper ***conduct*** on the licensed premises, the department of revenue suspended the licensees' license. From district court judgment affirming that suspension, licensee appealed.

Counsel: Keller & Dunivietz, Alex Stephen Keller, for plaintiff-appellant.

Max P. Zall, City Attorney, Lloyd K. Shinsato, Assistant City Attorney, for defendant-appellee.

Judges: Opinion by Judge Pierce. Judge Coyte and Judge Enoch concur.

Opinion by: PIERCE

Opinion

[*214] [**958] Plaintiff filed a complaint pursuant to *C.R.C.P. 106* to obtain review of an order by the Director of Excise and Licenses of the City and County of Denver (Director), suspending plaintiff's hotel and restaurant liquor

license for a violation of Regulation 19B of the Rules and Regulations of the Executive Director of The Department of Revenue.

Regulation 19B *HN1* reads as follows:

"Each licensee shall ***conduct*** his ***establishment*** in a decent, orderly and [***2] respectable manner, and shall not permit within or upon the licensed premises the loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise, or other disturbance or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the ***establishment*** is located."

The notice and order to show cause issued to plaintiff alleged that on the day in question, a male patron of the plaintiff was approached by a woman who solicited the patron for the purchase of a bottle of champagne. After purchasing the wine, the patron was enticed by two women to a secluded portion of the ***establishment*** where he and the females engaged in various forms of social intercourse, mostly sexual. Thereafter, one of the women directed the patron to see the manager of the ***establishment*** who presented him with a bill for $ 750, which sum, coincidentally or not, amounted to the total of a certified check which the patron had in his possession. The patron endorsed the check over to plaintiff. After a hearing, the Director found that these events had occurred, and that plaintiff had therefore violated Regulation 19B.

[***3] Plaintiff does not dispute the fact that the complained of ***conduct*** actually occurred, nor does it challenge the constitutionality of the regulation. Rather it argues that the ***conduct*** does not fall within Regulation 19B.

I.

Plaintiff's principal argument is that there was insufficient evidence in the record to show that it "permitted" the ***conduct*** in question. It is plaintiff's contention that the word [*215] "permit" in this context denotes knowing acquiescence or consent and that, therefore, it was necessary to allege and prove actual knowledge by the plaintiff of the ***conduct*** in question. We disagree with this contention.

HN2 When a statutory term may be used in different senses, it is permissible for the court to apply the definition which will "best effectuate the legislative intent in the enactment of the law." *Fifteenth Street Investment Co. v. People, 102 Colo. 571, 81 P.2d 764*.

In *Denver v. Gushurst, 120 Colo. 465, 210 P.2d 616*, *HN3* our Supreme Court stated that the intent and primary purpose of the Colorado Liquor Code, under which the regulation in question was promulgated, was to authorize, subject to regulation and safeguards, the sale and consumption of [***4] intoxicating liquors, and, at the same time, to "completely outlaw and eradicate" the vices and ill effects which had come to be associated with the sale of such beverages. The court concluded that in view of that [**959] purpose, the liquor code was not to be subjected to a strained or narrow construction.

Under this clear expression of legislative intent, we hold that to have "permitted" a violation of the regulation, the plaintiff need not have had actual knowledge of the specific activities constituting the violation. *See Wittenburg v. Board of Liquor Control, 80 N.E.2d 711* (Ohio App.).

HN4 The holder of a license for the sale of alcoholic beverages has an affirmative responsibility to see that his business is not ***conducted*** by his employees (or by his employees in concert with other persons) in violation of the law. *See Oxman v. Department of Alcoholic Beverage Control, 153 Cal. App. 2d 740, 315 P.2d 484*. Therefore, since the evidence clearly supports a finding that activities in violation of the regulation had occurred with, at least, the implicit knowledge of the bartender, which knowledge is imputed to plaintiff, it was not necessary that actual knowledge by plaintiff [***5] be pleaded or proved to substantiate a charge that plaintiff had "permitted" the prohibited activity.

II.

Plaintiff apparently does not contest the fact that the [*216] bartender was its agent and employee, but it further argues that it was necessary to prove that the women involved were employees or agents of the licensee. While the

order to show cause did allege that the women were employees or agents, the allegation was unnecessary and superfluous since the regulation applies to all ***conduct*** which the licensee permits on the premises, whether it is ***conducted*** by its employees or not. It is well established that *HN5* where a fact alleged is not a necessary ingredient to the offense, it need not be proved. Therefore, unnecessary allegations in an order to show cause before an administrative licensing authority can be disregarded. *See People v. Swanson, 109 Colo. 371, 125 P.2d 637*.

We have examined the other allegations of the plaintiff and find them to be without merit.

We conclude that there was sufficient evidence to support the conclusion of defendant that plaintiff was in violation of Regulation 19B and that, therefore, there was no abuse of discretion by the Director. [***6] *See MacArthur v. Sanzalone, 123 Colo. 166, 225 P.2d 1044*.

The judgment of the trial court affirming the decision of the Director is affirmed.

Jamie Beard

LexisNexis

User Name: Jamie Beard
Date and Time: Nov 06, 2014 6:49 p.m. EST
Job Number: 14494381

Document(1)

1. 400 Club, Inc. v. Canjar, 523 P.2d 141
   Client/Matter: -None-

Cited
As of: November 6, 2014 6:49 PM EST

400 Club, Inc. v. Canjar

Court of Appeals of Colorado, Division Two
April 16, 1974
No. 73-175

Reporter
523 P.2d 141; 1974 Colo. App. LEXIS 948

400 CLUB, INC., a Colorado corporation, Plaintiff-Appellant, v. George A. CANJAR, Director of Excise and Licenses, City and County of Denver, Defendant-Appellee

Notice: [**1] Not Selected for Official Publication

Subsequent History: Rehearing Denied May 7, 1974.

Core Terms

regulation, licensee, license, establishment, suspension, violations, lewd, liquor license, vague, woman

Case Summary

Procedural Posture
Appellant licensee sought review of the decision of the trial court (Colorado) that upheld the decision of appellee city license director that ordered the suspension of the licensee's liquor license.

Overview
The city license director ordered the suspension of the licensee's liquor license and the trial court affirmed. The court affirmed also because it found there was ample evidence to show the licensee had violated the local regulation that prohibited lewd or indecent displays at the establishment. An undercover police officer testified that he saw a woman who was a dancer at the establishment, fondle the penis of a male patron. The licensee claimed that he did not have actual knowledge of any violations but the court found the woman's knowledge with respect to the violations was imputed to the licensee. The court also found the regulation was not vague because it was sufficiently explicit to inform the licensee what conduct would render it liable to penalties. The court found that the evidence supported the suspension and the city license director did not abuse his discretion.

Outcome
The court affirmed the decision of the trial court that upheld the decision of the city license director that ordered the suspension of the licensee's liquor license.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Disruptive Conduct > Loitering, Panhandling, Prowling & Vagrancy > General Overview

Governments > Local Governments > Licenses

HN1 Denver Colo. R. and Regs. of the Executive Director of the Dept. of Revenue 19B provides that each licensee shall conduct his establishment in a decent, orderly and respectable manner, and shall not permit within or upon the licensed premises the loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise, or other disturbance or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the establishment is located.

Jamie Beard

523 P.2d 141, *142; 1974 Colo. App. LEXIS 948, **1

Governments > Legislation > Overbreadth

Governments > Legislation > Vagueness

HN2 A regulation must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A regulation which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

Counsel: Keller & Dunievitz, Lionel Dunievitz, Denver, for Plaintiff-Appellant.

Max P. Zall, City Atty., Lloyd K. Shinsato, Asst. City Atty., Denver, for Defendant-Appellee.

Judges: Coyte, Judge. Silverstein, C. J., and Enoch, J., concur.

Opinion by: COYTE

Opinion

[*142] Plaintiff appeals from a judgment of the trial court which upheld the decision of the Denver Director of Excise and Licenses ordering the suspension of plaintiff's liquor license. We affirm.

These proceedings were initiated when the Director issued to plaintiff a notice and order to show cause why its liquor license should not be suspended for violation of *HN1* Regulation 19 B of the Rules and Regulations of the Executive Director of the Department of Revenue. That regulation reads as follows:

> "Each licensee shall conduct his establishment in a decent, orderly and respectable manner, and shall not permit within or upon the licensed premises the loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise, or other disturbance or activity offensive to the senses of the average citizen, or [**2] to the residents of the neighborhood in which the establishment is located."

An officer of the Denver police department testified at the hearing that he observed a woman fondling the penis of a male patron in the licensee's liquor establishment. The involved woman testified that she was employed by plaintiff as a dancer. Following the hearing, the Director ruled that plaintiff was in violation of Regulation 19 B and ordered its license suspended for a period of six days. Pursuant to C.R.C.P. 106(a), plaintiff sought review of the Director's action in district court, which court, after a hearing, upheld the action of the Director. On appeal, plaintiff contends that the district court erred in its construction of the word "permit", and that the regulation is too vague to be enforceable.

Plaintiff first contends that the word "permit" in Regulation 19 B requires that it have actual knowledge of any violations and the evidence is insufficient to support a finding that it had such knowledge. We disagree.

In The Clown's Den, Inc. v. Canjar, Colo.App. 518 P.2d 957, we held that the term "permit" does not require that the licensee have actual knowledge of the specific activities [**3] constituting a violation of Regulation 19 B. Here, it was established that the woman involved was an employee of plaintiff and her knowledge with respect to violations of Regulation 19 B is therefore imputed to plaintiff. Karidies v. Dept. of Alcoholic Beverage Control, 164 Cal.App.2d 549, 331 P.2d 145. The record supports the findings that plaintiff permitted the conduct which violates Regulation 19 B.

Plaintiff next contends that the regulation is void because it is unduly vague. We disagree.

HN2 A regulation must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A regulation which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first

essential of due process of law. *Memorial Trusts, Inc. v. Beery, 144 Colo. 448, 356 P.2d 884*. We find no such vagueness here.

Acts and forms of lewdness constituted criminal offenses at common law. 50 Am.Jur.2d Lewdness, Indecency, and Obscenity § 1. We approve and adopt the statement of the court in *State v. Evans, [*143] 73 Idaho [**4] 50, 245 P.2d 788*, where the court stated:

> "Lewd and lascivious are words in common use and the definitions indicate with reasonable certainty the kind and character of acts and conduct which the legislature intended to prohibit and punish, so that a person of ordinary understanding may know what conduct on his part is condemned."

Accord, Lovelace v. Clark, 83 Ariz. 27, 315 P.2d 876.

The evidence in the instant case supports the finding of the Director that the conduct involved was of the type proscribed by Regulation 19 B, People v. "Sarong Gals", *27 Cal.App.3d 46, 103 Cal.Rptr. 414*; *see Steinke v. Municipal Court, 2 Cal.App.3d 569, 82 Cal.Rptr. 789*, and therefore the Director did not abuse his discretion in suspending plaintiff's license.

The judgment is affirmed.

SILVERSTEIN, C. J., and ENOCH, J., concur.

Jamie Beard

BEFORE THE LIQUOR AND BEER LICENSING AUTHORITY

CITY OF GRAND JUNCTION, STATE OF COLORADO

ORDER

IN THE MATTER OF:

MZ ENTERTAINMENT, LLC
D/B/A/ THUNDERSTRUCK VALLEY
436 MAIN STREET
GRAND JUNCTION, CO 81501

LICENSE NO. T-01-14

After a full evidentiary hearing on November 5, 2014, at which counsel for the City of Grand Junction (the "City") and counsel for MZ Entertainment, LLC d/b/a Thunderstruck Valley ("Thunderstruck") were both present and participated through examination and the presentation of evidence, the undersigned Hearing Officer finds, orders and determines as follows:

Preliminary Matters and Question Presented

The hearing was initially scheduled to address four issues. As identified in this Hearing Officer's October 2, 2014, Order, those issues were as follows:

1. The alleged actions of August 10, 2014, identified in the City's Notice to Show Cause;
2. The alleged actions of July 26, 2014, identified in the City's Notice to Show Cause;
3. Alleged violation(s) concerning the ownership of Thunderstruck; and,
4. Conversion of Thunderstruck's temporary license into a permanent license.

Items 2, 3, and 4 were all resolved prior to the evidentiary hearing. The Hearing Officer dismissed Item 2 at the request of the City. The Hearing Officer accepted Thunderstruck's written statement of ownership and, therefore, Item 3 was resolved. Finally, the Hearing Officer converted Thunderstruck's temporary permit to a permanent license thereby resolving Item 4.

Therefore, the only issue addressed at hearing was the City's allegation under Regulation 47-900 that:

...on August 10, 2014 [at] about 1:05 a.m., the licensee, by and through its local agent Gabriel Cohen, knowingly engaged in an act of disorderly conduct (fights with another in a public place). Mr. Cohen was observed by witnesses punching, kicking, and kneeing Trevor Thompson, a customer of the establishment and such witnesses reported to the Grand Junction Police Department that such conduct was offensive and unnecessary.

1

Discussion

The undisputed evidence establishes:

· Trevor Thompson ("Thompson") was in the licensed premises known as Thunderstruck (hereinafter "Establishment" while "Thunderstruck" shall refer to the entity/licensee) on the night/early morning hours of August 9-10, 2014;
· The Establishment was crowded at the time Thompson was there;
· While there, Thompson had some curiosity as to why a friend of his was asked to leave the Establishment;
· In an attempt to satisfy his curiosity, he spoke to an unidentified manager of the Establishment;
· To further address his concerns he, along with a friend, approached Gabriel Cohen ("Cohen");
· Cohen is an employee of the third party security firm hired by Thunderstruck to provide security services who was, in fact, providing security services at Thunderstruck on the night in question;
· There was a discussion and then physical altercation between Thompson and Cohen;
· During the altercation Cohen struck or otherwise contacted Thompson several times;
· During the altercation, Kory Hatcher (a colleague of Cohen's) came to the scene and assisted Cohen in subduing Thomson;
· During the altercation, Thompson was resisting to some extent;
· Hatcher placed handcuffs on Thomson and led Thompson out of the facility;
· Thompson and Cohen both spoke with the police;
· At the time Cohen spoke with the police, he was wearing Kevlar half-gloves;
· As a result of this Cohen's contact with Thompson, Thompson was injured.

A number of issues are disputed including the role of Thompson's friend, the amount of contact between Cohen and Thompson, the extent of Thompson's injuries, whether Cohen was wearing the gloves at the time of the altercation, and, most importantly, the nature of Thompson's actions during and immediately before the altercation.

Thompson's testimony is of questionable reliability. Both Cohen and Officer Keech testified that Thompson was intoxicated at the time of the altercation; Thompson testified that he had had a couple of beers. Additionally, among other problems with his testimony, (1) Thompson's recollection of the timing was inconsistent with that of the other witnesses; (2) Officer Keech testified that Thompson informed Officer Keech on the night of the altercation that he was going to "get that guy" (presumably Cohen) bringing into question all of Thompson's testimony; (3) Thompson offered what the Hearing Officer found to be incredible testimony that both his stud earrings (affixed to his ears with backings) popped out of his ears as a result of the altercation; (4) Thompson was unsure whether he was cuffed before or after he was struck; and (5) Thompson identified a level of injury inconsistent with that recalled by Officer Keech. In large part, the Hearing Officer disregards Thompson's testimony, accepting it only to the extent that it was corroborated by other witnesses.

Though more credible, the testimony offered by Mark Towner (50% owner of

Thunderstruck), Cohen, Keith Harris, and Cohen's colleague Kory Hatcher was obviously biased. In particular, it appeared to the Hearing Officer that Hatcher was attempting to protect Cohen. Harris's and Cohen's testimonies will be further addressed below.

Two police officers also testified. The testimony of Officer Godwin and Officer Keech was certainly very credible but also limited. Neither officer saw the events and only became involved after Thompson was escorted outside. Given the Officers' experience, lack of bias, and the Hearing Officer's prior positive experience with Officer Keech, the Hearing Officer finds these witnesses to be extremely credible.

Both Officer Keech and Mr. Harris offered what the Hearing Officer considers to be expert testimony. Though it was obvious to the Hearing Officer that Mr. Harris was attempting to protect his organization and Thunderstruck, the Hearing Officer found his responses relating to the protocols Cohen should have followed to be credible.

Finally, there was testimony from three bystanders, Memo Padilla, Margret Padilla, and Britt Kunz. The Hearing Officer is not aware of any bias from these witnesses and, except as indicated below, found their testimony to be credible. Each of these witnesses testified that he or she was offended by Cohen's conduct. Furthermore, each of these bystanders seemed to be an "average citizen" as that term is used in Regulation 47-900. Thunderstruck's counsel argued in his closing argument that the quality of testimony (and not the lack of bias) from these individuals was what was relevant, arguing that there were inconsistencies and also arguing that these individuals did not see or hear the whole interaction between Cohen and Thompson. The Hearing Officer agrees that these witnesses' testimony is limited. Nevertheless, given the nature of the testimony, the lack of bias, and the fact that each is a disinterested bystander who actually witnessed the conduct in question, the Hearing Officer views these witnesses' testimony, in totality, to be credible.

Mr. Padilla stated that, because he was the designated driver, he had not been drinking on the night in question. He further indicated that he witnessed the altercation and his attention was called to Messrs. Thompson and Cohen[1] when he heard shouting. He noticed that they were in very close proximity facing one another, that a friend of Thompson was nearby, and that Cohen repeatedly told Thompson to be quiet. Mr. Padilla testified that he never heard Cohen tell Thompson to leave the premises but acknowledged that he heard only bits and pieces of the exchange. Mr. Padilla testified that Thompson never acted aggressively toward Cohen. Mr. Padilla further testified that Cohen punched Thomson, Thompson was surprised by the strike, Thompson did not have time to respond, a second security guard (which turned out to be Hatcher) came to the scene and, together they kneed (Cohen) and handcuffed (Hatcher) Thompson. As to Thompson's friend, Mr. Padilla states that he was there until he "took off". Mr. Padilla believed that Hatcher gave Cohen a "what are you doing type" look at the time Hatcher entered the fray. It

[1] Mr. Padilla, Ms. Padilla and Mr. Kunz did not identify Thompson and Cohen by name but the context of their testimony and the remainder of the evidence make it clear that Thompson and Cohen are the people to whom they were referring.

was Mr. Padilla's view that Cohen should have had more control. Mr. Padilla testified that he and his party left soon after the altercation and that he was offended by the events that he had witnessed in the Establishment.

Ms. Padilla testified that she saw less of the event, only noticing it when she saw two or three security personnel rushing towards the altercation. No other witness testified that there were two or three personnel; instead, the bulk of the testimony indicated that only Hatcher came to the scene. Ms. Padilla testified noticed that Thompson was bleeding from his nose; this is contradicted by Officer Keech who recalled Thompson was bleeding from his mouth. Her description of her location within the Establishment as well as the fact that she did not hear the exchange between Cohen and Thompson is concerning. Given what appears to the Hearing Officer to be an unclear recollection of the altercation, the Hearing Officer disregards Ms. Padilla's testimony as to the circumstances before and during the altercation. The Hearing Officer accepts her testimony, however, that she, along with her husband and others, left the Establishment soon afterward and that she found the events disturbing.

Britt Kunz testified that he came to the Establishment after his shift ended at another local bar; he testified that he had not been drinking. Kunz testified that he saw Cohen and Thompson talking (though he could not hear them) and that the conversation, though initially cordial, became heated. Kunz, like Mr. Padilla, indicated that Thompson and Cohen "were in each other's face." He testified that he saw Cohen hit Thompson two or three times, that Thompson fell back onto the stage, that Thomson was then in an "absolutely" defensive position, cowering. Kunz also testified that Thompson's friend was initially present but then left. Kunz testified that after Thompson fell, Cohen kneed Thompson in the head, actually picking up Thomson's head to knee him. According to Kunz, Thomson never hit Cohen. Kunz testified that when Hatcher approached the scene, it initially seemed like he was going to restrain Cohen but, in the end, Hatcher placed hand cuffs on Thompson. Kunz testified that he found the altercation disturbing. The Hearing Officer found Kunz to be especially credible.

In many ways Kunz's recollection matches up with that of Cohen (and, for that matter, that of Mr. Padilla). Like Kunz, Cohen testified that Thomson and Kunz were face to face, that Thompson's friend was present, that their discussion became heated, that he struck Thompson, that Thompson fell onto the 25" high stage (as measured by the Hearing Officer personally), that Cohen kneed Thompson in an effort to restrain Thompson, that Hatcher came to the scene and cuffed Thompson and led Thomson away. In fact, the only differences were that they disagreed on the number and nature of the strikes by Cohen, the role of the friend, and, most importantly, whether Thompson touched Cohen first. Cohen testified that Thompson touched Cohen on the neck area (there is no reference to this in Kunz's testimony), that the friend virtually simultaneously touched Cohen on the shoulder (there is no reference to this in Kunz's testimony), that Cohen only punched Thompson once (Kunz says 3-4 times), and that Cohen used a recognized side position maneuver to restrain Thompson, kneeing Thompson in the shoulder and that, if he hit Thompson's head, it was by accident (Kunz did not offer any such technical testimony but stated that Cohen actually picked up Thompson's head to knee it). The Hearing Officer believes that, due to the fact that Cohen's actions are those that are in dispute, Cohen's testimony is less credible

than Kunz's.

Finally, Officer Keech, Hatcher, and Cohen himself all testified that Cohen was "amped up" at the time of the event. Officer Keech also testified that, immediately after the event, Cohen's faced was flushed and that he had some redness on his neck.

APPLICABLE LAW

The applicable regulation is *Regulation 47-900. Conduct of Establishment* which states, in relevant part:

> Each person licensed under Article 46, Article 47, and Article 48 of Title 12, and any employee or agent of such licensee shall conduct the licensed premises in a decent, orderly and respectable manner… nor shall the licensee, his employee or agent knowingly permit any activity or acts of disorderly conduct as defined by and provided for in Section 18-9-106, C.R.S., nor shall a licensee permit rowdiness, undue noise, or other disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed establishment is located.

C.R.S. 18-9-106 provides that a person commits disorderly conduct if that person "intentionally, knowingly, or recklessly…(d) Fights with another in a public place…", among other things.

In addition, counsel for the Licensee directed the Hearing Officer to Full Moon Saloon, Inc. v. City of Loveland, 111 P.3d 568 (Colo. App. 2005) and Costiphx v. City of Lakewood, 728 P.2d 358 (Colo. App. 1986) and counsel for the City directed the Hearing Officer to Clown's Den, Inc. v. Canjar, 518 P.2d 957, 33 Colo. App. 212 (1973) and 400 Club, Inc. v. Canjar, 523 P.2d 141 (Colo. App. 1974). The Hearing Officer has reviewed all of this authority as well as other legal authority he found relevant.

FINDINGS OF FACT

Based upon the foregoing, the Hearing Officer makes the following findings of Fact and Conclusions of Law

· Trevor Thompson was in the Establishment on the night/early morning hours of August 9-10, 2014;
· There were many people in the Establishment at the time of the altercation;
· While there, Thompson had some curiosity as to why a friend of his was asked to leave the Establishment; ;
· To attempt to satisfy his curiosity, he spoke to an unidentified manager of the Establishment;
· To further address his concerns he, along with a friend, approached Gabriel Cohen ("Cohen");

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· Cohen is an employee of the third party security firm hired by Thunderstruck to provide security services;
· As such, Cohen was an agent of Thunderstruck;
· Cohen supplied security services on the night and at the time in question;
· While Cohen was on duty, there was a verbal exchange and then physical altercation between Thompson and Cohen;
· At the time of the altercation, Thompson was intoxicated;
· At the time of the altercation, Cohen was "amped up" which the Hearing Officer interprets as meaning excited and filled with adrenalin (this is supported by Cohen's testimony);
· During the altercation Cohen struck or otherwise contacted Thompson several times;
· Thompson never struck or otherwise contacted Cohen (this accepts Kunz' and Mr. Padilla's testimony and not Cohen's);
· Cohen struck Thompson when Thompson was in a defensive position (this accepts Kunz' and Mr. Padilla's testimony and not Cohen's);
· Thompson's friend never touched Cohen (this accepts Kunz' and Mr. Padilla's testimony and not Cohen's) though the friend was present at least at the beginning of the altercation;
· Cohen kneed Thompson in the head, whether purposely or in an attempt to knee Thompson's shoulder or in an effort to hold down Thompson;
· During the altercation, Kory Hatcher (a colleague of Cohen's) came to the scene and assisted Cohen in subduing Thomson;
· During the altercation, Thompson resisted to some extent;
· Hatcher placed handcuffs on Thompson and led Thompson out of the Establishment;
· Thompson and Cohen both spoke with the police;
· During his interview with police, Thompson stated he was "going to get" Cohen;
· When Cohen spoke with the police, he was wearing Kevlar half-gloves;
· As a result of Cohen's contact with Thompson, Thompson was injured;
· Ms. Padilla, Mr. Padilla, and Kunz are "average citizens" as that term is used in Regulation 47-900; and,
· Average citizens (*i.e.*, Mr. Padilla, Ms. Padilla, and Kunz) were offended by Cohen's conduct for and on behalf of Thunderstruck.

CONCLUSIONS OF LAW

1. The Hearing Officer finds that Thunderstruck has an affirmative responsibility to conduct its business and see that its agents conduct the business in compliance with the law. Clown's Den, 518 P.2d at 959; Full Moon Saloon, 11 P.3d at 570.
2. Cohen was an agent of Thunderstruck.
3. Thunderstruck "permitted" the activity in question as that term is used in Regulation 47-900 and the violation as alleged did occur.
4. The Hearing Officer does not find the subject altercation to be a "fight" within the meaning of C.R.S. 18-9-106 and further finds the rest of that statute's provisions to be inapplicable here. Nevertheless, the City's specific reference to regulation 47-900 provided adequate notice of the

legal issues in question (the key language, set forth immediately below, was referenced to some extent in by counsel for both parties in the opening statements).

5. The focus of the Hearing Officer's analysis is whether Thunderstruck permitted a disturbance or activity offensive to the senses of the average citizen.

6. Based upon this narrow standard, the Hearing Officer finds that the conduct of Cohen in regards to Thompson was offensive to the senses of Mr. Padilla, Ms. Padilla and Kunz whom the Hearing Officer finds to be average citizens;

7. The Hearing Officer concludes Cohen's actions prior to physical contact with Thompson to be appropriate and, therefore, not the basis of any sanction.

8. Based upon Officer Keech's testimony and that of Mr. Harris, the Hearing Officer finds the use of handcuffs to be appropriate in these circumstances and, therefore, not the basis of any sanction.

9. Given that the placement of Thompson in handcuffs necessitates physical contact with Thompson, the Hearing Officer also finds that some physical contact with Thompson would have been appropriate,.

10. In this case, however, the Hearing Officer finds the amount of physical contact used by Cohen to be excessive and offensive to the senses of the Padillas and Kunz.

11. The Hearing Officer accepts the testimony of Mr. Padilla that Cohen should have exhibited more control and Kunz's testimony that Cohen's behavior was overly violent.

12. The Hearing Officer finds that Cohen's conduct is "activity offensive to the senses of the average citizen" within the meaning of Regulation 47-900.

13. The Hearing Officer concludes that the presence of the Kevlar gloves (whether on Cohen throughout the activity as alleged by the City or put on after the subject activity as maintained by Cohen) is irrelevant to this Charge.

14. Under Regulation 47-600, evidence may be given in defense and explanation of the charges. *Cf.*, Regulation 47-604 (allowing mitigation to be considered in the context of violations due to service of underage persons).

15. In closing argument, Counsel for Thunderstruck made the argument that, in acting as he did, Cohen did not undermine order, he kept it. It is certainly true that security personnel such as Cohen need to be given some latitude in dealing with intoxicated and/or belligerent persons in the establishment for which they are providing security. In this situation, Officer Keech testified that Thompson was intoxicated and several witnesses testified that Thompson approached Cohen and not vice versa.

16. Furthermore, the evidence established that there were many people in the Establishment requiring vigilant security. Thunderstruck's counsel argued that security in a busy establishment is a difficult job and the Hearing Officer accepts this to be true.

17. The Hearing Officer also concludes that the presence of Thompson's friend created an additional potential threat to Cohen even though, as noted above, the Hearing Officer finds that there was no physical contact or other interference from the friend.

18. Given that there were many people in the Establishment at the time of the altercation, Thompson approached Cohen, Thompson was intoxicated, and the presence of Thompson's friend posed a potential threat to Cohen, the Hearing Officer finds mitigation of the sanction to be appropriate and that those mitigating facts are reflected in the sanction set forth below.

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SANCTION

Given that the activity of Thunderstruck's agent violated Regulation 47-900 but that conduct is mitigated for the reasons set forth above, the Hearing Officer finds that Thunderstruck's license is suspended for five (5) days as a penalty for its violation of the Colorado Liquor Code as set forth above. Three (3) days of the suspension to be held in abeyance for a period of one (1) year from the date of this Order on condition that MZ Entertainment/Thunderstruck has no further violations of the Colorado Liquor Code or any applicable local ordinance, rule or regulation during that period.

A day (days) shall mean a period of 24 hours.

MZ Entertainment/Thunderstruck's license is actively suspended for two days. Those two days shall be served consecutively on a consecutive Saturday and Sunday of Thunderstruck's choice on or before December 31, 2014 (*i.e.,* November 22-23, November 29-30, December 6-7, December 13-14, December 20-21, or December 27-28). MZ Entertainment/ Thunderstruck must give at least three days notice of the dates it intends to serve its suspension to the City Clerk and also must follow all other requirements required by Colorado law applicable to suspended license.

November 18, 2014

Michael J. Grattan III, Hearing Officer

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DEC 10 2014 PM12:20

Liquor and Beer Licensing Authority City of Grand Junction, State of Colorado 250 N. 5th Street Grand Junction, Colorado 81501 Telephone: (970) 244 - 1510 IN THE MATTER OF: MZ Entertainment, LLC d/b/a Thunderstruck Valley 436 Main Street Grand Junction, CO 81501 License No. T-01-04	**COURT USE ONLY**
Attorney for MZ Entertainment, LLC: Thomas C. Volkmann SPIECKER, HANLON, GORMLEY & VOLKMANN, LLP P.O. Box 1991 Grand Junction, Colorado 81502 Phone Number: 970-243-1003 FAX Number: 970-243-1011 Atty. Reg. #: 17659 e-mail: tom@shgvlaw.com	Case Number: Division Courtroom
PETITION PURSUANT TO CRS §12-47-601 FOR PAYMENT OF FINE IN LIEU OF SUSPENSION	

MZ Entertainment, LLC d/b/a Thunderstruck Valley ("MZ"), through their undersigned counsel, Thomas C. Volkmann of Spiecker, Hanlon, Gormley & Volkmann, LLP, hereby submits its Petition pursuant to CRS §12-47-601(3), to pay a fine in lieu of the two (2) day suspension ordered by the Authority on November 18, 2014 (the "Order"). In support of this Petition, MZ submits the following:

1. The Order provided a sanction against MZ of suspension of five (5) days, three (3) of which are to be held in abeyance for one (1) year, and the other two (2) days active suspension.

2. The period in which the active suspension is to be served pursuant to the Order is to be on or before December 31, 2014.

3. As part of this Petition, MZ waives any appeal rights it has relative to the Order, thereby rendering the Order final for the purposes of CRS §12-47-601(3)(a).

4. The public welfare and morals are not impaired by permitting MZ to operate throughout the period set for the suspension, without closure of the licensed premises, and the payment of the subject fine will achieve the desired disciplinary purposes of the Order. MZ has

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not previously had its license suspended or revoked, nor had any prior suspensions stayed by the payment of a fine. The unique nature of the violation found in the Order, which did not include any alcohol service violation, when viewed in the light that the recurrence of such events can be prevented through the knowledge gained in the subject hearing, make this an appropriate case for the payment of the fine in lieu of active suspension.

5. November is the most recently completed month prior to the date proposed for the active suspension, which is to be prior to December 31, 2014. Accordingly, it represents the most accurately available "estimated gross revenues from sales of alcohol beverages during the period of the proposed suspension" as provided in CRS §12-47-601(3)((b).

6. Attached hereto as Exhibit A is the point of sale system printout from MZ for the calendar month of November, 2014, maintained in the books and records of MZ in the ordinary course of its business and which accurately reflects the gross revenue from sales of alcohol beverages for that month. Also attached with Exhibit A is a letter from Mark Towner explaining the source and nature of that printout. (The original tape printout and letter are attached to the copy hereof served on the City Clerk.) This statement is kept in such a manner that the loss of sales of alcohol beverages that MZ would have suffered had the suspension gone into effect between the date hereof and December 31, 2014 (as provided in the Order) can be determined with reasonable accuracy.

7. As provided in the November P & L, the gross revenues from that month from the sale of alcohol beverages at the licensed premises was $113,110.29 (the aggregate of the Liquor, Beer and Wine entries totaled under the title "SYSTEM Tracking). Dividing that figure by thirty (30), for the number of days in that month, the daily gross revenue from the sale of alcohol beverages for that month was $3,770.34. Accordingly, the fine to be paid in lieu of active suspension is twenty percent (20%) of twice that amount, or $1,508.14. This amount is higher than the statutory minimum of $200.00, and less than the statutory maximum of $5,000.00, as provided in CRS §12-47-601(b).

8. MZ respectfully requests that the Authority enter an order as provided in CRS §12-47-601 approving the payment of the above fine in lieu of active suspension and, upon payment thereof, enter its further order permanently staying the active suspension in the Order as provided in CRS § 12-47-601(4).

Dated this 10th day of December, 2014.

SPIECKER, HANLON, GORMLEY & VOLKMANN, LLP

By: _____
Thomas C. Volkmann #17659

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 2014, a true and correct copy of the foregoing **PETITION PURSUANT TO CRS §12-47-601 FOR PAYMENT OF FINE IN LIEU OF SUSPENSION** was served via email to the following:

Michael J. Grattan III
Hearing Officer
City of Grand Junction
250 North 5th St.
Grand Junction, Colorado 81501
michael@gjlawyer.com

and by hand delivery to:

Delayne Merritt
Staff Attorney
City Attorney's Office
250 North 5th St.
Grand Junction, Colorado 81501
delaynem@ci.grandjct.co.us

Stephanie Tuin
City Clerk
250 North 5th St.
Grand Junction, Colorado 81501

Amy Luker

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ThunderStruck VALLEY

To Whom It May Concern,

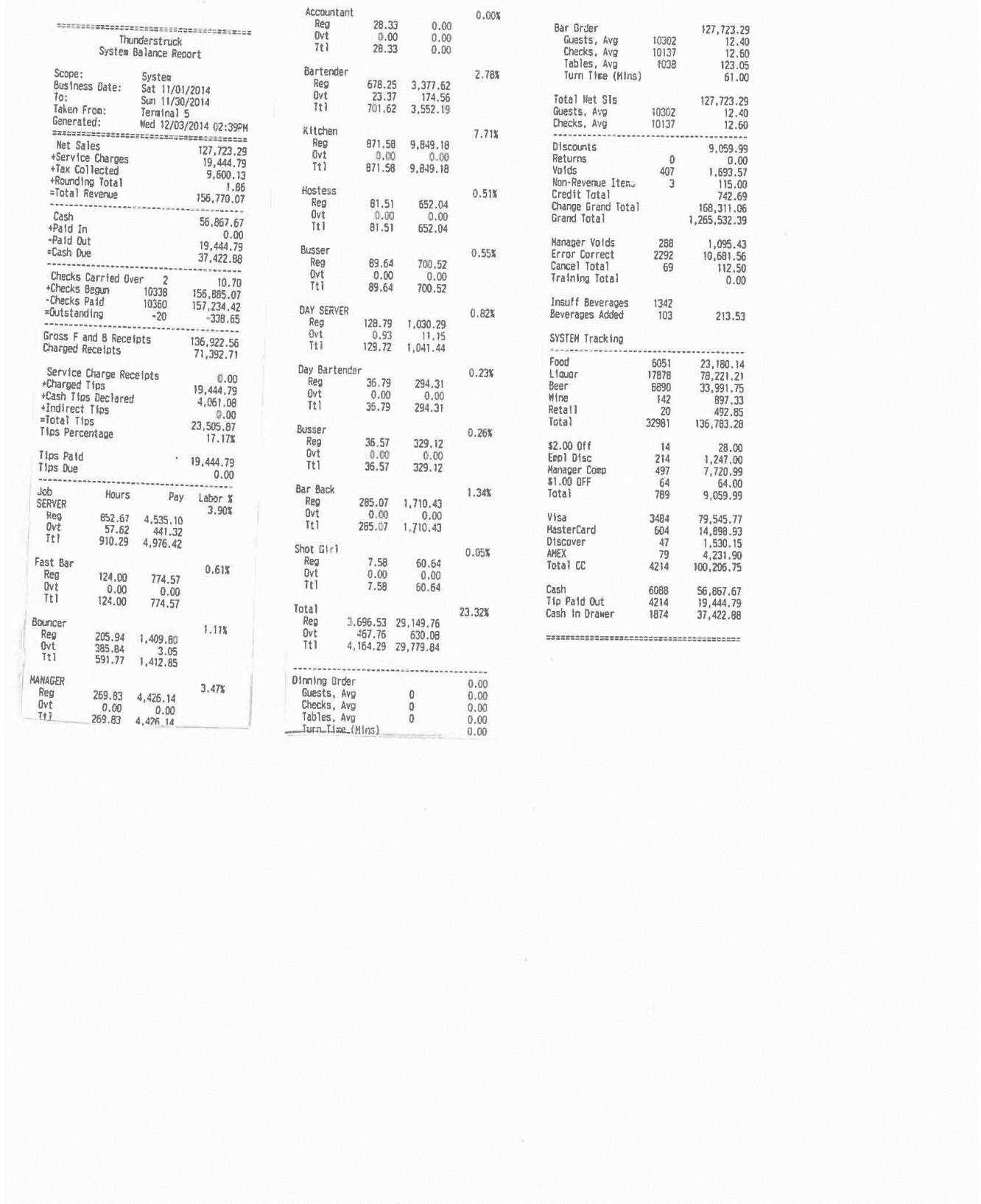
The print out for our November sales is the most accurate figure we can produce to show what liquor revenue was for MZ Entertainment, DBA Thunderstruck Valley in the month of November. This is taken from our Micros computer system for the restaurant. It accounts for all sales as the report notates at the top (system). It also shows the dates for which it was taken. We use an accountant that then inputs this data into Quickbooks. In short, a Quickbooks or any other generated documents would simply have this information with a middle man involved. This report simply cuts out that middle man and provides a report \that cannot be altered.

Thank you

Mark Towner

EXHIBIT "A"

436 Main St.
Grand Jct, CO 81501
info@thunderstruckvalley.com



Thunderstruck
System Balance Report

Scope:	System	
Business Date:	Sat 11/01/2014	
To:	Sun 11/30/2014	
Taken From:	Terminal 5	
Generated:	Wed 12/03/2014 02:39PM	
Net Sales		127,723.29
+Service Charges		19,444.79
+Tax Collected		9,600.13
+Rounding Total		1.86
=Total Revenue		156,770.07
Cash		56,867.67
+Paid In		0.00
-Paid Out		19,444.79
=Cash Due		37,422.88
Checks Carried Over	2	10.70
+Checks Begun	10338	156,885.07
-Checks Paid	10360	157,234.42
=Outstanding	-20	-338.65
Gross F and B Receipts		136,922.56
Charged Receipts		71,392.71
Service Charge Receipts		0.00
+Charged Tips		19,444.79
+Cash Tips Declared		4,061.08
+Indirect Tips		0.00
=Total Tips		23,505.87
Tips Percentage		17.17%
Tips Paid		19,444.79
Tips Due		0.00

Job	Hours	Pay	Labor %
SERVER			3.90%
Reg	852.67	4,535.10	
Ovt	57.62	441.32	
Ttl	910.29	4,976.42	
Fast Bar			0.61%
Reg	124.00	774.57	
Ovt	0.00	0.00	
Ttl	124.00	774.57	
Bouncer			1.11%
Reg	205.94	1,409.80	
Ovt	385.84	3.05	
Ttl	591.77	1,412.85	
MANAGER			3.47%
Reg	269.83	4,426.14	
Ovt	0.00	0.00	
Ttl	269.83	4,426.14	
Accountant			0.00%
Reg	28.33	0.00	
Ovt	0.00	0.00	
Ttl	28.33	0.00	
Bartender			2.78%
Reg	678.25	3,377.62	
Ovt	23.37	174.56	
Ttl	701.62	3,552.19	
Kitchen			7.71%
Reg	871.58	9,849.18	
Ovt	0.00	0.00	
Ttl	871.58	9,849.18	
Hostess			0.51%
Reg	81.51	652.04	
Ovt	0.00	0.00	
Ttl	81.51	652.04	
Busser			0.55%
Reg	89.64	700.52	
Ovt	0.00	0.00	
Ttl	89.64	700.52	
DAY SERVER			0.82%
Reg	128.79	1,030.29	
Ovt	0.93	11.15	
Ttl	129.72	1,041.44	
Day Bartender			0.23%
Reg	36.79	294.31	
Ovt	0.00	0.00	
Ttl	36.79	294.31	
Busser			0.26%
Reg	36.57	329.12	
Ovt	0.00	0.00	
Ttl	36.57	329.12	
Bar Back			1.34%
Reg	285.07	1,710.43	
Ovt	0.00	0.00	
Ttl	285.07	1,710.43	
Shot Girl			0.05%
Reg	7.58	60.64	
Ovt	0.00	0.00	
Ttl	7.58	60.64	
Total			23.32%
Reg	3,696.53	29,149.76	
Ovt	467.76	630.08	
Ttl	4,164.29	29,779.84	

Dinning Order			0.00
Guests, Avg		0	0.00
Checks, Avg		0	0.00
Tables, Avg		0	0.00
Turn Time (Mins)			0.00
Bar Order			127,723.29
Guests, Avg	10302		12.40
Checks, Avg	10137		12.60
Tables, Avg	1038		123.05
Turn Time (Mins)			61.00
Total Net Sls			127,723.29
Guests, Avg	10302		12.40
Checks, Avg	10137		12.60
Discounts			9,059.99
Returns	0		0.00
Voids	407		1,693.57
Non-Revenue Item.	3		115.00
Credit Total			742.69
Change Grand Total			168,311.06
Grand Total			1,265,532.39
Manager Voids	288		1,095.43
Error Correct	2292		10,681.56
Cancel Total	69		112.50
Training Total			0.00
Insuff Beverages	1342		
Beverages Added	103		213.53

SYSTEM Tracking

Food	6051	23,180.14
Liquor	17878	78,221.21
Beer	6890	33,991.75
Wine	142	897.33
Retail	20	492.85
Total	32981	136,783.28
$2.00 Off	14	28.00
Empl Disc	214	1,247.00
Manager Comp	497	7,720.99
$1.00 OFF	64	64.00
Total	789	9,059.99
Visa	3484	79,545.77
MasterCard	604	14,898.93
Discover	47	1,530.15
AMEX	79	4,231.90
Total CC	4214	100,206.75
Cash	6088	56,867.67
Tip Paid Out	4214	19,444.79
Cash In Drawer	1874	37,422.88

BEFORE THE LIQUOR AND BEER LICENSING AUTHORITY

CITY OF GRAND JUNCTION, STATE OF COLORADO

ORDER

IN THE MATTER OF:

MZ ENTERTAINMENT, LLC
D/B/A/ THUNDERSTRUCK VALLEY
436 MAIN STREET
GRAND JUNCTION, CO 81501

LICENSE NO. T-01-14

Having reviewed the *Petition Pursuant to CRS § 14-47-601 for Payment of Fine in Lieu of Suspension* (the "Petition") filed by MZ Entertainment, LLC, d/b/a/ Thunderstruck Valley ("MZ") and the City's December 10, 2014, e-mailed response by which the City indicated that it would not be filing an objection to the Petition, the Hearing Officer hereby GRANTS the relief requested in the Petition and Orders that MZ may pay a fine of $1,508.14 in lieu of the active suspension ordered in the Hearing Officer's November 18, 2014, Order. Upon MZ's payment thereof, the period of active suspension identified in the November 18, 2014, Order is permanently stayed.

December 11, 2014

Michael J. Grattan III, Hearing Officer