

**LIQUOR AND BEER MEETING
LOCAL LICENSING AUTHORITY
CITY OF GRAND JUNCTION, COLORADO
TWO RIVERS CONVENTION CENTER, 159 MAIN STREET**

MINUTES

WEDNESDAY, JUNE 16, 1999, 8:00 A.M.

I. **CALL TO ORDER** – The meeting was convened at 8:05 a.m. Those present were Hearing Officer Phil Coebergh, Assistant City Attorney John Shaver and Acting City Clerk Christine English.

II. **APPLICATIONS TO RENEW LIQUOR AND BEER LICENSES**

1. McGovern Enterprises Incorporated dba Pizza Hut of Grand Junction No. 2, 704 Horizon Drive, 3.2% Beer On Premise

The application was in order and approved.

2. Last Chance Liquors Incorporated dba Last Chance Liquors, 1203 Pitkin Avenue, Retail Liquor

Tom Campbell, owner, was present. The application was in order and approved.

3. Orange Coast Investment Incorporated dba Grand Vista Hotel, 2790 Crossroads Blvd, Hotel-Restaurant

Dan Sharp with Orange Coast Investment Incorporated was present. The application was in order and approved.

4. Wigout Productions Incorporated dba Mesa Theatre & Club, 538 Main Street, Tavern

David Prather, owner, and Tom Volkman, attorney, were present. The application for renewal was in order. Hearing Officer Coebergh recommended moving the Advisement on the Verified Complaint forward on the agenda and taking care of both matters at this time. Mr. Shaver concurred with this. Mr. Shaver recommended approval on the license renewal subject to the issues on the complaint, and to act on that later. The license renewal was approved.

Stephanie Rubinstein, staff attorney, was present. Ms. Rubinstein stated an amendment on count two (2) needs to be made. The statute cited should read 12-47-901(1)(a).

Mr. Shaver recommended dealing with the advisement and answering any questions of Mr. Prather and/or Mr. Volkman, and setting the hearing date. Mr. Shaver suggested setting the hearing for the July 21, 1999 meeting. Mr. Volkman stated he had a conflict on that date. Mr. Shaver stated he would be unavailable for the July 7 meeting and Mr. Coebergh stated he would be unavailable during the month of August. The hearing was set for the August 18, 1999 meeting at 8:00 a.m. at Two Rivers Convention Center.

Mr. Coebergh asked Mr. Volkman if he had received a copy of the verified complaint. Mr. Volkman stated he had received it, responded to it and has requested discovery already.

III. APPLICATION FOR RENEWAL AND DECISION ON CAUSE FOR LATE FILING

1. Junction Diner LLC dba Junction Diner, 2571 Highway 6 & 50, Beer and Wine
Expiration Date June 8, 1999, Filed June 1, 1999

Ms. English stated the applicant had sent the renewal to the state. The state received it on May 10, 1999 and sent it back to the applicant who then brought it into the City Clerk's office on June 1, 1999. At that time a letter of explanation was filed (see attached).

Mr. Shaver stated the authority has found good cause in most circumstances especially when there has not been a lapse in the licensure. Mr. Shaver appreciated the candor of the applicant and recommended it be found to be good cause with the admonition that there can not be further late filings without further consideration by the Authority of sanctions.

Mr. Scott Lindsey, owner, came into the meeting late. Mr. Coebergh asked Mr. Shaver to review what had been discussed on this matter for Mr. Lindsey.

Mr. Lindsey stated this is the first time they have filed a renewal, although the office staff is familiar with the laws, they did not know it was necessary to send the renewal to the City Clerk's office instead of the state. A new procedure has been instituted as a result of this with Mr. Lindsey in charge of the liquor licensing.

Mr. Shaver recommended that good cause is found and the late renewal accepted.

Mr. Coebergh approved the application.

IV. APPLICATION FOR RENEWAL AND REPORT OF CHANGE IN CORPORATE STRUCTURE

1. QS Incorporated dba Shanghai Garden Restaurant, 715 Horizon Drive, Hotel-Restaurant

President: Chiew Han Chiou replaces Yen-Fen Chen

Stockholders: Chiew Han Chiou (50%) replaces Yen Fen Chen (51%)
Shiou C. (Joy) Kwan, from 49% to 50%

Mr. Coebergh stated there is a problem with the lease that needs to be dealt with before moving forward on the license renewal and report of change. Mr. Coebergh stated this matter will be continued to the next regularly scheduled meeting and that both written and oral notification be given to the president of the corporation.

Mr. Shaver stated efforts have all ready been made to contact the owner. There is a language barrier so written notification is a good idea.

V. ADVISEMENT ON VERIFIED COMPLAINT – MOVED TO ITEM #4 UNDER APPLICATIONS FOR RENEWAL

1. IN THE MATTER OF Wigout Productions Incorporated dba Mesa Theatre and Club,
Regarding Violation of 12-47-901(a) C.R.S. UNLAWFUL ACTS; Regarding Violation of
12-47-901(5)(a)(l) C.R.S. UNLAWFUL ACTS and Colorado Liquor Regulation 47-900;
and, Regarding Violation of Colorado Liquor Regulation 47-900

VI. HEARING ON VERIFIED COMPLAINT

1. IN THE MATTER OF The Pour House LLC dba The Pour House, 715 Horizon Drive, Regarding Violation of 12-47-901(5)(a)(I) C.R.S. UNLAWFUL ACTS and Colorado Liquor Regulation 47-900; and 12-47-901(5)(e) C.R.S. UNLAWFUL ACTS and Colorado Liquor Regulation 47-900; **Continued from May 19, 1999 and June 2, 1999**

Mr. Coebergh stated the violations have been incorrectly cited on both the verified complaint and on the agenda.

Ms. Rubinstein agreed and stated she would like to amend the statute cited in the violation to read, Count One, 12-47-901(1)(a) and Count Two, 12-47-901(1)(h)(I). The language is the same except one refers to retail liquor as opposed to a tavern liquor license.

Mr. Tom Volkman, attorney, was present representing The Pour House LLC. Mr. Volkman stated he wanted a moment to check the statutes just stated.

Mr. Coebergh stated there was a motion at this time to amend the statutory citations. Mr. Volkman had no objection to the amendment. Mr. Coebergh approved the amendment to correct the statutory citations and moved to continue with the hearing as scheduled.

Mr. Coebergh stated at this time he would hear opening statements.

Ms. Rubinstein waived opening statement.

Mr. Volkman stated the matter today was on two charges: 1). Serving a visibly intoxicated person; and 2). Possession of alcoholic beverages which the licensee is not licensed to sell or possess. Mr. Volkman stated in looking at the documentation, the only report in support of these charges is a one-page report from Officer Campbell. It has two sentences on the topics concerning this matter. From the two sentences it cannot be read as any factual background for either of the charges. The sentences read, "Many of the patrons were intoxicated and several of them were drinking throughout the night," and "People were walking around the bar with six-packs and other alcoholic beverages." It is impossible to tell from these two sentences what the factual basis for the charges are. Mr. Volkman stated he objects to this because: 1). It fails to meet the fundamental fairness test in a due process context of advising him of exactly what these charges are based upon. There are two Colorado cases on this topic, that relate to this objection. One is Chroma Corporation, citation 543P2nd 83. The second is Costiphx Enterprises vs. City of Lakewood, citation 728P2nd 58. Effectively these cases stand for the proposition that in the context of something as significant as the evaluation of a liquor license and the potential for the imposition of penalties or suspension of that license, the concept of due process and fundamental fairness apply. They discuss that concept in the context of the quality and amount of information provided in connection with the charges. In the Costiphx Enterprises case, they addressed a claim relative to the service of a visibly intoxicated person. In upholding the charges there, the court specifically noted that the name of the patron or bartender in each case was identified. They are not identified in this case today. Similarly, it is not identified exactly how and under what conditions with regard to what particular alcoholic beverage are outside the boundaries of the license relative to people possessing alcohol within The Pour House. Mr. Volkman stated he objects to the acceptance of any evidence outside the scope of the report only because he has not been provided the opportunity to amply prepare a defense relative to that. The report is very brief. Mr. Volkman stated he would be providing evidence that none of the violations that are charged occurred. Mr. Volkman stated he is still unfamiliar as to the

nature of the charge relative to possession of alcohol not licensed to sell. In talking to Ms. Rubinstein, he was advised that beer was brought into the establishment from outside. Mr. Volkman stated he would be putting in evidence that not only is this impractical, but also impossible. If in fact this is simply a matter of someone holding a six pack of beer inside the establishment, evidence will be presented that the beer was just being physically transported, they were each opened. There is no charge here of sale of unopened or packaged liquor. In regard to visibly intoxicated persons, as mentioned earlier, the evidence will show that there is no evidence as to what bartender was involved, what persons were involved, what the circumstances were that lead anyone to the conclusion that that person or those persons were visibly intoxicated. What factual basis is there for the position that those visibly intoxicated persons were actually served within these premises? The report evidences that in waiting in line to come into the establishment, some of the people were visibly intoxicated already. Mr. Volkman stated he and his client take issue with both the charges and believe they should both be dismissed and that the license should not be subject to any penalty or any imposition of any problem based upon these charges.

Mr. Coebergh thanked Mr. Volkman for his opening statements and stated that Mr. Volkman seemed to have made a motion to dismiss. The motion to dismiss is being based on a lack of notice of the alleged violations. Mr. Coebergh stated he is not familiar with the report and is unaware of what it contains. He was concerned if there are no names given in the report as to who allegedly was involved with these violations as this would make it very difficult for the licensee to investigate or to have the people present at the hearing this morning to try to refute the charges. Mr. Volkman indicated the report is extremely short, and included no names at all. Mr. Coebergh stated he wanted to give the City a chance to respond to the motion.

Ms. Rubinstein stated she had a copy of the report which she would give to Mr. Coebergh. Ms. Rubinstein stated she would refer to it now in her response. On the evening the report was made, which was January 29, 1999, the evening had begun when officers had gone past The Pour House and noticed there were quite a few people outside. Because of the number of people outside, they were concerned and began doing bar checks in that area. There were eight different officers there trying to control the crowd. The officers estimated there were 500 people. It would have been very difficult to get names as they were there for crowd control, and they were concerned with public safety. They noticed the capacity was only for 350 people, and they were unable to move very far within the bar. The report is in fact quite a bit longer than two sentences. What Mr. Volkman was referring to is that there are specifically two sentences that refer to the charges. All the names of the officers are in the report and Mr. Volkman could have spoken to any of the officers to get more information as to what happened at any time. Ms. Rubinstein also informed him as to whom she would be calling as her witnesses for this hearing.

As to the 2nd count of the allegations, there is a statement in the report, which says there were persons carrying six-packs of beer. If they were carrying six-packs, it would be indicative that the establishment would have been selling beer in a way that a tavern should not be selling beer. Selling six-packs is indicative of either over service or that people are bringing six packs of beer into a tavern. Ms. Rubinstein stated she has spoken to Mr. Volkman and told him exactly what was being looked for. He had opportunity to ask any questions at that time. There are no specific names of patrons or bartenders in the report, only the totality of the circumstances which show there were problems on that evening as far as over service to visibly intoxicated persons. Ms. Rubinstein tendered a copy of the report to Mr. Coebergh.

At 8:35 a.m., Mr. Coebergh requested to go off the record to review the report. The meeting resumed at 8:41 a.m.

Mr. Coebergh stated there has been a motion made to dismiss based upon due process problems. After reviewing the report and discussing it somewhat with Mr. Shaver, Mr. Coebergh asked Ms. Rubinstein if this was the only report as it is labeled "Supplemental Report" which indicates other reports. Ms. Rubinstein stated that was the only report she was given by the Police Department. It was her understanding that this is the only report. As there were no tickets issued, it is strictly a report and not attached to any specific criminal charge.

Mr. Coebergh stated in discussing this with Mr. Shaver, the best way to proceed is to have the issue briefed on the motion to dismiss. Mr. Coebergh stated he was concerned with the potential lack of notice and potential inability to respond to something that is as general as the report, which gives no names for any of the people who were allegedly visibly intoxicated or of the employees of the establishment. The report talks about three people being given summons and from what he could tell nothing was provided in regard to those. There must be names available if three subjects were issued summons for disorderly conduct. Mr. Coebergh stated he would have preferred that this matter had been dealt with prior to this morning, as there are witnesses here. Mr. Coebergh stated he felt it was more efficient and appropriate to get this briefed before the evidence is heard. If the matter is dismissed, the evidence will not need to be heard. Mr. Coebergh stated he would continue this matter and he requested that a briefing schedule be set up.

It was determined that the briefing schedule would be: 2 weeks from this date, Mr. Volkman will file his brief; Ms. Rubinstein would then submit her brief within a week after that. Mr. Volkman would have 1 more week to review and to provide a reply brief if he deems it necessary. The hearing date was set for September 15, 1999. Mr. Volkman and Ms. Rubinstein agreed to this time schedule.

Mr. Coebergh apologized to those present but stated this would be the best solution.

VII. ADJOURNMENT – The meeting was adjourned at 8:53 a.m.

NEXT REGULAR MEETING – July 7, 1999

Office of City Clerk

This application for liquor license renewal is late because I was ignorant of the process to complete this renewal. I talked with Christine English this morning.

Thank you for your help.

Betty W. King
Bookkeeper
Junction Diner LLC
2571 Highway 6 & 50
Grand Junction, CO 81505

Enclosed our check for \$98.75