

City of Littleton

Minutes of Proceeding

Littleton Liquor Licensing Authority

February 11, 2009

The Littleton Liquor Licensing Authority met in a regular session on Wednesday, February 11, 2009, at the Littleton City Center, 2255 West Berry Avenue, Littleton, Colorado.

THOSE PRESENT: Anthony Gallagher - Chairperson
Bill Bradish - Vice Chairperson
John Cole - Authority Member
Susan Price - Authority Member
Donovan O'Dell - Authority Member

THOSE ABSENT: Earl Gunia – Authority Member
Victoria England - Authority Member

ALSO PRESENT: Alan Katz - Deputy City Attorney
Richelle Work - Deputy City Clerk
Greg Bohlen – Police Sergeant

1. **CALL MEETING TO ORDER**

Chairperson Gallagher called the meeting to order at 7:00 p.m.

2. **ROLL CALL**

Upon a call of the roll, five members were present. Authority Member Gunia and Authority Member England were absent. A quorum was declared. The following business was transacted.

3. **MINUTES**

(a) Minutes of Regular Meeting January 14, 2009

Action: Approved as submitted

It was moved by AUTHORITY MEMBER COLE, seconded by AUTHORITY MEMBER BRADISH TO APPROVE THE MINUTES AS AMENDED.

Ayes: Authority Members Gallagher, Bradish, Cole, Price and O'Dell

Nays: None

Absent: Authority Members Gunia and England

MOTION CARRIED: 5 to 0

4. **AGENDA**

Action: Approved as submitted

5. **SETTING NEIGHBORHOOD BOUNDARIES AND SCHEDULING APPLICATION**

- HEARINGS** - None
6. **CONSIDERATION OF OTHER APPLICATIONS AND REQUESTS**
- (a) **MODIFICATION OF PREMISES** - None
- (b) **TRANSFER OF OWNERSHIP** - None
- (c) **MANAGER'S REGISTRATION** - None
- (d) **SUMMARY SUSPENSION** - None
- (e) **CHANGE OF CORPORATE STRUCTURE** -- None
- (f) **CHANGE OF LOCATION** - None
- (g) **RENEWAL APPLICATION**
7. **FINDINGS OF PROBABLE CAUSE OF LIQUOR CODE VIOLATIONS AND SCHEDULING SHOW CAUSE HEARING** – None
8. **LIQUOR LICENSE APPLICATION HEARINGS - NEW APPLICATION** - None
9. **SHOW CAUSE HEARING**
- (a) ROCKY INC.
DBA: SUPER DISCOUNT LIQUOR OF LITTLETON
60 WEST LITTLETON BLVD.
LITTLETON, CO 80120
ACTION: VIOLATION FOUND

Authority Chairperson Gallagher stated this hearing was for a Show Cause determination on Police report #2008005465, dated December 15, 2008 Police report #2008-006942 dated January 16, 2009.

Alan Katz presented the police report and alleged violation information to the Authority. He stated there was a proposed stipulation. The agreement would be that the license be suspended for seven days total for both charges, with 14 days held in abeyance for one year. The seven days would be split up into two separate periods, staff would take training, would not sell again to this regular customer, and Mr. Duong would work on improving his English as second language.

Clifton Hypsher, Attorney for licensee. Mr. Hypsher stated that the licensee admits to both violations. One violation involved sale to a minor and the other was a sting by the police department. He explained the circumstances behind both violations. He stated that Mr. Duong has signed up for responsible vendor training and is waiting to be scheduled for Serve Safe Alcohol.

Authority Member Gallagher asked about the sting by the police department, saying that Mr. Duong needs to check the identification closer.

Authority Member Bradish stated that it is much more important to check ID then worry about customers shoplifting.

Alan Katz presented Exhibits A-D for the violations.

It was moved by AUTHORITY MEMBER BRADISH, seconded by AUTHORITY MEMBER GALLAGHER TO ADMIT EXHIBITS A-D FOR BOTH CHARGES.

Ayes: Authority Members Gallagher, O'Dell, Bradish, Cole, and Price

Nays: None

Absent: Authority Members Gunia and England

MOTION CARRIED: 5 to 0

Authority Member Gallagher asked Mr. Duong about the incident involving the DUI, asking if he would have sold it to him if he had come into the store, rather than going through the drive in, and asked if he felt that the drive in was a good idea.

Mr. Duong stated that the drive in window is good for business. He stated that it was in the morning and was difficult to tell that he was intoxicated. He wore sunglasses and did not speak much.

Mr. Hypsher stated that the drive in window clearly helps the business, but it will not be helping if the license is revoked.

Authority Member Gallagher stated that the Authority could not say he has to shut the window, but if something like this happens again, the consequences will be more severe.

Authority Member Bradish asked Mr. Duong if it is difficult to tell through window if someone is drunk and stated that it is up to Mr. Duong to see if it is worth having the window, to take the risk of selling to someone who is intoxicated.

Mr. Duong said that he has rejected people at the window because he could tell they were drunk. He asks for ID when he feels he needs to ask.

Attorney Katz stated that the mitigating factors are listed in the staff report.

Authority Member Gallagher went over aggravating and mitigating factors.

Mr. Hypsher stated that the store has three employees. If there is a long suspension, Mr. Duong may have to lay off employees. It is difficult to maintain business with a lengthy suspension.

Attorney Katz restated the recommendation of as even days active suspension, 14 days held in abeyance, for a total suspension of 21 days, and that the authority allow the seven days to be served in two parts. He stated that Mr. Duong is looking at selling the business, and with a longer suspension, his business could not survive long enough to sell the

business.

It was moved by AUTHORITY MEMBER GALLAGHER, seconded by AUTHORITY MEMBER COLE THAT THE AUTHORITY FIND THAT ROCKY, INC., D/B/A SUPER DISCOUNT LIQUOR OF LITTLETON, 60 WEST LITTLETON BLVD., LITTLETON, ARAPAHOE COUNTY, COLORADO DID VIOLATE C.R.S. 12-47-901(1)(A) AND LITTLETON MUNICIPAL ORDINANCE 3-2-10 (F). BASED ON SAID FINDINGS, I MOVE THAT ROCKY, INC., D/B/A SUPER DISCOUNT LIQUOR OF LITTLETON, 60 WEST LITTLETON BLVD. LIQUOR LICENSE BE SUSPENDED FOR 10 DAYS, WITH 7 DAYS HELD IN ABEYANCE AND THAT NOTICES OF SUCH SUSPENSION BE POSTED IN AND OUTSIDE OF THE LICENSED PREMISES IN ACCORDANCE WITH LIQUOR CODE REGULATION 47-600(F); AND THAT THE SUSPENSION BEGIN ON MARCH 1, 2009.

Ayes: Authority Members Gallagher, O'Dell, Bradish, Cole, and Price

Nays: None

Absent: Authority Members Gunia and England

MOTION CARRIED: 5 to 0

(b) ROCKY INC.
DBA: SUPER DISCOUNT LIQUOR OF LITTLETON
60 WEST LITTLETON BLVD.
LITTLETON, CO 80120
ACTION: VIOLATION FOUND

It was moved by AUTHORITY MEMBER GALLAGHER, seconded by AUTHORITY MEMBER O'DELL THAT THE AUTHORITY FIND THAT ROCKY, INC., D/B/A SUPER DISCOUNT LIQUOR OF LITTLETON, 60 WEST LITTLETON BLVD., LITTLETON, ARAPAHOE COUNTY, COLORADO DID VIOLATE C.R.S. 12-47-901(1)(A). BASED ON SAID FINDINGS, I MOVE THAT ROCKY, INC., D/B/A SUPER DISCOUNT LIQUOR OF LITTLETON, 60 WEST LITTLETON BLVD. LIQUOR LICENSE BE SUSPENDED FOR 11 DAYS WITH 7 DAYS BE HELD IN ABEYANCE FOR 1 YEAR AND THAT NOTICES OF SUCH SUSPENSION BE POSTED IN AND OUTSIDE OF THE LICENSED PREMISES IN ACCORDANCE WITH LIQUOR CODE REGULATION 47-600(F); AND THAT THE SUSPENSION BEGIN ON MARCH 10, 2009.

Ayes: Authority Members Gallagher, O'Dell, Bradish, and Cole

Nays: Authority Member Price

Absent: Authority Members Gunia and England

MOTION CARRIED: 4 to 1

- (c) KURT A. MELSTROM
DBA: PYRAMID DISCOUNT LIQUORS
599 WEST LITTLETON BLVD.
LITTLETON, CO 80120
ACTION: VIOLATION FOUND

Authority Chairperson Gallagher stated this hearing was for a Show Cause determination on Police report #2008006938, dated January 7, 2009.

Alan Katz presented the police report to the Authority and presented Exhibits A-D.

Mike Miller, attorney for licensee. Mr. Miller stated that the licensee would admit to the violation. The licensee has obtained this license in 1990 and has never had a violation. Mr. Melstrom's wife also has liquor store with no violations. They have strong ties to the community, with strict requirements for their store. That night, there was a young man working at the store, Kurt Lani. Mr. Lani said that he thought the kid was too young and asked him for ID. The ID was from Florida and he was not familiar with that type of ID. He looked at it, thought he had checked the date, but apparently did not realize he was underage. Mr. Lani was issued a ticket. He pled guilty, received \$296 in fines, came back, apologized, and accepted responsibility. Since this incident, Mr. Lani does not want to clerk while working at the store, only to stock. There was a 2nd sting sent into store and Mr. Lani caught the ID then, noticing the birth date was too young and did not make the sale. All staff is fully trained on how to check IDs. Mr. Melstrom has purchased an electronic computer that you run the ID through. He demonstrated how the computer works and entered a manual for the computer as Exhibit E.

It was moved by AUTHORITY MEMBER COLE, seconded by AUTHORITY MEMBER PRICE TO ADMIT EXHIBITS A-E.

Ayes: Authority Members Gallagher, O'Dell, Bradish, Cole, and Price

Nays: None

Absent: Authority Members Gunia and England

MOTION CARRIED: 5 to 0

Mr. Miller stated that the employees confiscate IDs when it does not look real. He asked that copies of the IDs that have been confiscated be admitted as Exhibit F.

It was moved by AUTHORITY MEMBER BRADISH, seconded by AUTHORITY MEMBER COLE TO ADMIT EXHIBIT F.

Ayes: Authority Members Gallagher, O'Dell, Bradish, Cole, and Price

Nays: None

Absent: Authority Members Gunia and England

MOTION CARRIED: 5 to 0

Attorney Katz stated that he knows that Mr. Melstrom and Mr. Miller were part of an organization in the past where the liquor establishments in Littleton did their own stings and other programs to try to make sure the area liquor stores were doing a good job. This organization was called Littleton Retail Liquor Association. He stated that some staff is TIPS trained.

It was moved by AUTHORITY MEMBER GALLAGHER, seconded by AUTHORITY MEMBER BRADISH THAT THE AUTHORITY FIND THAT KURT A. MELSTROM, D/B/A PYRAMID DISCOUNT LIQUORS, 599 WEST LITTLETON BLVD., LITTLETON, ARAPAHOE COUNTY, COLORADO DID VIOLATE C.R.S. 12-47-901(1)(A). BASED ON SAID FINDINGS, I MOVE THAT KURT A. MELSTROM, D/B/A PYRAMID DISCOUNT LIQUORS, 599 WEST LITTLETON BLVD. LIQUOR LICENSE BE SUSPENDED FOR 1 DAY, WITH 1 DAY HELD IN ABEYANCE FOR ONE YEAR .

Ayes: Authority Members Gallagher, O'Dell, Bradish, Cole, and Price

Nays: None

Absent: Authority Members Gunia and England

MOTION CARRIED: 5 to 0

(d) METRO OIL CO., INC.
DBA: DIAMOND SHAMROCK #1109
6857 SOUTH BROADWAY
LITTLETON, CO 80122
ACTION: VIOLATION FOUND

Authority Chairperson Gallagher stated this hearing was for a Show Cause determination on Police report #2008006939, dated January 7, 2009.

Alan Katz presented the police report and alleged violation information to the Authority along with Exhibits A-D.

It was moved by AUTHORITY MEMBER PRICE, seconded by AUTHORITY MEMBER BRADISH TO ADMIT EXHIBITS A-D.

Ayes: Authority Members Gallagher, O'Dell, Bradish, Cole, and Price

Nays: None

Absent: Authority Members Gunia and England

MOTION CARRIED: 5 to 0

Adam Stapen, attorney for licensee. Mr. Stapen stated that Dave Pullman and Christine Nelms are also present. The licensee admits to the violation and apologizes for the violation. He stated that Diamond Shamrock requires all staff to pass a computer-based training regarding alcohol/tobacco sales before they are allowed to sell to customers. Staff must also sign an affirmation quarterly, stating they will check IDs and uphold all policies and procedures. Every year staff has to retake and pass the computer-based training. The stores have point of sale machines, which prompt the clerk to check ID. The individual who sold to the minor was fired immediately, as Diamond Shamrock has a no tolerance policy for selling to minors. He stated that ID was requested and presented, but the clerk did not catch the age. The policies that are in place work, as this store has had no violations since obtaining the license in 1999. After this violation, the remaining employees had to sit down and go over the policies for selling alcohol. The licensee is requesting that any penalty be held in abeyance, as there is no likelihood of recurrence.

Mr. Stapen stated that alcohol sales are minimal and are not a profit product, but there is a lot of emphasis on training anyway.

It was moved by AUTHORITY MEMBER BRADISH, seconded by AUTHORITY MEMBER O'DELL THAT THE AUTHORITY FIND THAT METRO OIL CO., INC., D/B/A DIAMOND SHAMROCK #1109, 6857 SOUTH BROADWAY, LITTLETON, ARAPAHOE COUNTY, COLORADO DID VIOLATE C.R.S. 12-47-901(1)(A). BASED ON SAID FINDINGS, I MOVE THAT METRO OIL CO., INC., D/B/A DIAMOND SHAMROCK #1109, 6857 SOUTH BROADWAY LIQUOR LICENSE BE SUSPENDED FOR 2 DAYS WITH 2 DAYS HELD IN ABEYANCE.

Ayes: Authority Members Gallagher, O'Dell, Bradish, Cole, and Price

Nays: None

Absent: Authority Members Gunia and England

MOTION CARRIED: 5 to 0

10. GENERAL BUSINESS

Authority Member Gallagher stated that Authority Member O'Dell informed him that Dubbs Pub had signs on their tables regarding their recent suspension, stating the days that the license was suspended to the effect that the Authority made a big deal about nothing.

Attorney Katz stated that this type of information should never play a role for any future issues concerning Dubbs Pub.

Authority Member Gallagher stated that he thought the liquor regulations said they are not allowed to do that, that the only sign that could be put up was by the city.

City of Littleton

Littleton Liquor Authority

February 11, 2009

Page 8

Attorney Katz stated that the signs on the table might involve first amendment rights. He stated he would check the regulations to see about signs.

Authority Member Cole stated he does not care if they put up signs regarding the violation.

11. **REPORTS**

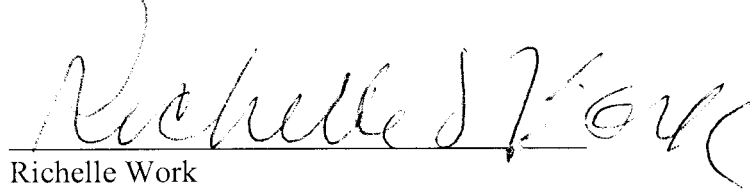
a) **Staff** – None

Assistant City Attorney – None

b) **Authority Members** – None

c) **Chairperson** – None

12. **ADJOURNMENT** – There being no further business, Chairperson Gallagher adjourned the meeting at 8:14 p.m. on February 11, 2009.



Richelle Work

Deputy City Clerk/Recording Secretary