



LOCAL LICENSING AUTHORITY

Minutes
June 1, 2016

ROLL CALL

The Regular Meeting of the Broomfield Local Licensing Authority was called to order by Chairperson Murray at 5:30 p.m. on June 1, 2016, in the Council Chambers of the George Di Ciero City and County Building.

Present: Mr. Gary Berlin
Mr. Leon Murray
Councilmember Mike Shelton
Mr. Jacob Starkovich, Alternate

Absent: Councilmember David Beacom
Mr. Ken Claussen
Councilmember Martha Derda, Alternate

Also present were: Deputy City and County Attorney Pat Gilbert
Assistant City and County Attorney Karl Frundt
Records and Licensing Administrator / Deputy Clerk Tricia Kegerreis

DISPOSITION OF MINUTES

(a) Minutes of the Regular Meeting of May 4, 2016

Since there were no corrections or additions, the Minutes of the Regular Meeting of May 4, 2016, were approved as submitted.

LOCAL LICENSING AUTHORITY BUSINESS

(a) CST Metro, LLC d/b/a Corner Store #1129 – Renewal – 3.2% Beer Off-Premises License

Michelle Harding, Manager, and Carol Rowenoff, Regional Manager, were present on behalf of the Licensee. In response to Authority questions, Ms. Harding stated that the store has only had one violation, December 2015. She reviewed all of the practices put in place after the violation.

AUTHORITY MEMBER BERLIN MOVED AND AUTHORITY MEMBER SHELTON SECONDED THAT THE LOCAL LICENSING AUTHORITY APPROVE THE RENEWAL OF THE 3.2% BEER LICENSE FOR OFF-PREMISES CONSUMPTION FOR CST METRO, LLC D/B/A CORNER STORE #1129. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

(b) The Noodle Shop Co. – Colorado, Inc. d/b/a Noodles & Company – Manager Registration – Hotel & Restaurant License

Devi Lopez, Manager, was present on behalf of the Licensee. In response to Authority questions, Ms. Lopez stated that all managers received training and are ServSafe certified. She

noted that managers will complete all alcohol transactions for any employee under eighteen years of age.

AUTHORITY MEMBER BERLIN MOVED AND AUTHORITY MEMBER SHELTON SECONDED THAT THE LOCAL LICENSING AUTHORITY APPROVE THE MANAGER REGISTRATION FOR THE HOTEL AND RESTAURANT LICENSE FOR THE NOODLE SHOP CO. - COLORADO, INC. D/B/A NOODLES & COMPANY, LOCATED AT 4530 W. 121ST AVENUE, #4, IN BROOMFIELD. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

(c) Pizza on Purpose, Inc. d/b/a Double D's Sourdough Pizza – Application for a Hotel & Restaurant License

Deputy City and County Attorney Gilbert presented the Staff summary, stating that all that is necessary at this point is to note receipt of the application, establish the neighborhood boundaries, and set a date and time for the hearing. The suggested neighborhood boundary is the area within a radius of one mile from the premises proposed for the license.

Max Scott, Oedipus, Inc. was present on behalf of the Applicant and did not have any objections to the proposed neighborhood boundary.

AUTHORITY MEMBER BERLIN MOVED AND AUTHORITY MEMBER SHELTON SECONDED THAT THE LOCAL LICENSING AUTHORITY NOTE RECEIPT OF THE APPLICATION FOR A HOTEL AND RESTAURANT LICENSE AT 535 ZANG STREET, SUITE A IN BROOMFIELD; THAT THE LOCAL LICENSING AUTHORITY SET A PUBLIC HEARING ON SAID APPLICATION FOR 5:30 P.M. ON JULY 6, 2016, TO BE HELD IN THE CITY COUNCIL CHAMBERS OF THE GEORGE DI CIERO CITY AND COUNTY BUILDING; AND THAT THE LOCAL LICENSING AUTHORITY ESTABLISH THE NEIGHBORHOOD BOUNDARIES FOR THE SUBJECT APPLICATION AS THE AREA WITHIN A RADIUS OF ONE MILE FROM THE APPLICANT'S PROPOSED LOCATION. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

(d) Wal-Mart Stores, Inc. d/b/a Walmart Supercenter #5341 – Application for a Retail 3.2% Beer On/Off Premises License – Public Hearing

Chairperson Murray opened the public hearing at 5:44 p.m. and advised that the purpose of the hearing was to permit all parties in interest an opportunity to be heard regarding the application for a Retail 3.2% Beer On/Off Premises license submitted by Wal-Mart Stores, Inc. d/b/a Walmart Supercenter #5341 and that the procedures outlined in the Authority's Rules of Procedure would be followed.

Kevin Coates, Attorney with Dill and Dill was present on behalf of the Applicant. Also in attendance were Max Scott, Oedipus, Inc., and Justin Miller, Store Manager, who were sworn in prior to providing testimony.

Deputy City and County Attorney Gilbert reviewed the Staff memorandum and advised that the information submitted by the Applicant, Exhibits A-1 through A-10 and information provided by Staff, B-1 through B-3 were offered as exhibits for purposes of the public hearing. Chairperson Murray admitted Exhibits A-1 through A-10 and Exhibits B-1 through B-3 since there were no objections.

Attorney Coates stated that Walmart is looking to change the class of license from a 3.2% Beer Off Premises License to a 3.2% Beer On/Off Premises License, which is the only type of fermented malt beverage license that can provide alcohol delivery service. He noted that Walmart would like to add delivery of alcohol to the popular grocery online delivery program. There is no plan to provide on premises consumption of alcohol.

Mr. Scott testified on the survey methodology and results of the petitioning completed by Oedipus, Inc. He noted that, although there were 50 signatures in opposition (37%), only eight were based on the needs and desires criteria, which resulted in a rating of 91.3% in favor and 8.7% in opposition for issuance of the license. Mr. Scott testified that there will be delivery of alcohol with groceries from 5 a.m. to midnight. He noted there is no other 3.2% Beer On/Off Premises License in the area, and the results show a need and desire for this type of license for this Applicant at this address.

Store Manager Justin Miller testified that Walmart will follow the standard operating procedures outlined in Exhibit A-4, which is compliant with State delivery regulations. He noted that the drivers will be trained to be sure recipients of alcohol will be over the age of 21.

Authority Member Berlin stated that petitioners came to his door but he did not sign the petition because he felt that signing would be a conflict of interest.

In response to Authority Member questions, the Applicant responses included: 1) Master File Individual History Records have been updated and a copy can be submitted to the Clerk's office if needed; 2) When delivering alcohol, the credit card and driver's license must match with the person who placed the order, and if there is any concern, the alcohol will not be delivered; 3) Regulation 47-426 states that a form be kept which lists the type and number of the identification used by the purchaser; 4) All delivery persons will be over 18 years of age and will be trained appropriately; 5) Exhibit A-4, the Colorado Online Grocery Alcohol Delivery Sales control plan, is a good document put together by Walmart; 6) There might be a privacy issue if delivery drivers were to take pictures of identifications with cell phones and the law only requires that the identification number be written on the form; 7) Some of the reasons listed by those signing the petition in opposition are not relevant to the needs and desires of the neighborhood and should not be considered; 8) Retail liquor stores have to follow the same rules for delivery of alcohol; 9) The purchasing adults will need to be sure alcohol is not given to under-aged persons; and 10) Delivery of alcohol has not begun at any of the Walmart stores even though a few licenses have been issued.

There was no party in interest in attendance who appeared in opposition nor in support of the application.

The public hearing was closed at 6:29 p.m.

Deputy City and County Attorney Gilbert presented the proposed Findings.

AUTHORITY MEMBER SHELTON MOVED AND AUTHORITY MEMBER STARKOVICH SECONDED THAT THE PROPOSED FINDINGS BE ADOPTED. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

AUTHORITY MEMBER SHELTON MOVED AND AUTHORITY MEMBER BERLIN SECONDED THAT HAVING REVIEWED THE EVIDENCE IN ITS ENTIRETY, THE AUTHORITY FINDS THAT THE APPLICANT HAS SUSTAINED ITS BURDEN OF SHOWING THAT THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD OR THE DESIRES OF THE INHABITANTS WERE NOT SATISFIED BY EXISTING OUTLETS. ACCORDINGLY, THE APPLICATION IS APPROVED AND THE LICENSE WILL BE ISSUED PENDING ISSUANCE BY THE STATE AND INSPECTION AND APPROVAL OF THE PREMISES BY THE CITY. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

(e) Vinimix, LLC d/b/a Vinimix – Application for a Beer and Wine License – Public Hearing

Chairperson Murray opened the public hearing at 6:40 p.m. and advised that the purpose of the hearing was to permit all parties in interest an opportunity to be heard regarding the application for a Beer and Wine license submitted by Vinimix, LLC d/b/a Vinimix.

Adam Stapen, Attorney with Dill and Dill, was present on behalf of the Applicant. Also in attendance were Max Scott, Oedipus, Inc., and Matthew Perrin, Vinimix, LLC, who were sworn in prior to providing testimony.

Deputy City and County Attorney Gilbert reviewed the Staff memorandum and advised that the information submitted by the Applicant was offered as Exhibits A-1 through A-9 for purposes of the public hearing. Information provided by Staff was also offered as B-1 through B-3. Chairperson Murray admitted Exhibits A-1 through A-9 and Exhibits B-1 through B-3 since there were no objections.

Attorney Stapen stated that this is a residential complex and the clubhouse would be licensed for use by the residents and not for the general public. There is now one location in Colorado and another proposed for Centennial.

Mr. Scott testified on the survey methodology and results of the petitioning by Oedipus, Inc. He stated that of the 13 signatures in opposition, seven were related to the needs and desires of the neighborhood, resulting in 95.57% signing in favor of issuance of the license while 4.43% signed in opposition.

Mr. Perrin testified that he works for Wolf Company which has similar residential developments in other parts of the country. He noted that Vinimix, LLC is the holding company for the liquor licenses and concessionaires. The idea is to draw residents to use the clubhouse. Mr. Perrin stated that they had discussed this idea with Liquor Enforcement Director Patrick Maroney who had told him that a Beer and Wine License would be the type of license needed. The Concession Agreement gives possession of the premises which is designated as the clubhouse area, excluding the fitness center, office and patio. He stated the self-serve taps would be located in the kitchen and would serve a maximum of only two 16-ounce pours per day for residents who had signed an addendum to the lease for this service. The alcohol will be

available on weekdays from 9 a.m. to 6 p.m. and on weekends from 9 a.m. to 8 or 10 p.m. The area will be monitored by the administrative office staff, who will activate resident credit cards for the computer-operated table-taps after checking the identification. The alcohol will be in a locked storage area and the taps will be turned off if no staff is present. The maximum beer allowed for each resident is two 16-ounce pours per day. Staff members will attend both the Broomfield Alcohol Servers Training and the ServSafe Alcohol Training. Participation in this amenity can be revoked at any time. The development is now 65% leased. Non-residents can only enter through the front door.

There was no party in interest in attendance who appeared in opposition nor in support of the application.

The public hearing was closed at 7:27 p.m.

Deputy City and County Attorney Gilbert presented the proposed Findings.

AUTHORITY MEMBER SHELTON MOVED AND AUTHORITY MEMBER BERLIN SECONDED THAT THE PROPOSED FINDINGS BE ADOPTED. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

AUTHORITY MEMBER BERLIN MOVED AND AUTHORITY MEMBER SHELTON SECONDED THAT HAVING REVIEWED THE EVIDENCE IN ITS ENTIRETY, THE AUTHORITY FINDS THE APPLICANT HAS SUSTAINED ITS BURDEN OF SHOWING THAT THE REASONABLE REQUIREMENTS OF THE NEIGHBORHOOD OR THE DESIRES OF THE INHABITANTS WERE NOT SATISFIED BY EXISTING OUTLETS. ACCORDINGLY, THE APPLICATION IS APPROVED AND THE LICENSE WILL BE ISSUED PENDING ISSUANCE BY THE STATE AND INSPECTION AND APPROVAL OF THE PREMISES BY THE CITY. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

- (f) Woodland Bay Corporation d/b/a Liquor Star – Show Cause Hearing Re: Alleged Violation of Colorado Revised Statute 12-47-901(5)(a)(I) and BMC 9-64-010

Chairperson Murray advised that at the May 4, 2016, meeting, the Authority received a report from the Broomfield City Prosecutor alleging violations of the Colorado State Liquor Code and the Broomfield Municipal Code by the Licensee on April 8, 2016. The Authority issued a Show Cause Order stating there was probable cause to believe the Licensee had violated: C.R.S. §12-47-901(5)(a)(I) which provides that it is unlawful for any person to sell at retail an alcohol beverage to any person under the age of twenty-one years and Section 9-64-010 of the Broomfield Municipal Code (B.M.C.) which provides that it is unlawful for any person to sell, serve, give away, dispose of, exchange, deliver, or permit the sale, serving, giving or procuring of any alcoholic beverage to or for any person under the age of twenty-one years. The Local Licensing Authority set the Show Cause Hearing for June 1, 2016, at 5:30 p.m. The purpose of the hearing is to determine whether the Licensee is in violation of the Colorado State Liquor Code and/or the Broomfield Municipal Code for an offense for which the Authority may take action against the Licensee, and whether any action is to be taken against the Licensee.

Karl Frundt, Broomfield Municipal Prosecutor, provided a status update and advised that a stipulation for penalty had been reached with the Licensee, which includes a suspension of ten days, with six days to be held in abeyance until April 7, 2017, and payment of a fine in lieu of four days suspension in accordance with State statutes. In addition, the Licensee is required to provide proof that all current employees who are involved with the sale of alcoholic beverages have completed either the Broomfield Police Department's alcohol servers training class or an equivalent program allowed by the Authority.

Michael Vu was present on behalf of the Licensee and reviewed the details of the action taken by the employee who committed the violation. He noted that three employees would be taking the training.

AUTHORITY MEMBER SHELTON MOVED AND AUTHORITY MEMBER BERLIN SECONDED THAT THE PROPOSED FINDINGS BE ADOPTED, AS STIPULATED; AND THAT THE SHOW CAUSE HEARING IN THIS MATTER SCHEDULED FOR 5:30 P.M., JUNE 1, 2016, BE VACATED. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

AUTHORITY MEMBER SHELTON MOVED AND AUTHORITY MEMBER BERLIN SECONDED THAT THE LOCAL LICENSING AUTHORITY IMPOSE A SUSPENSION OF 10 DAYS, WITH 6 DAYS TO BE HELD IN ABEYANCE IF NO FURTHER VIOLATIONS OCCUR ON OR BEFORE APRIL 7, 2017; AND PAYMENT OF A FINE IN LIEU OF 4 DAYS SUSPENSION IN ACCORDANCE WITH STATE STATUTES; AND LICENSEE WILL PROVIDE DOCUMENTATION REGARDING TRAINING COMPLETED BY EMPLOYEES. THE MOTION PASSED UNANIMOUSLY WITH MEMBERS BERLIN, MURRAY, SHELTON, AND STARKOVICH VOTING AYE.

PETITIONS AND COMMUNICATIONS

- (a) State Liquor Enforcement Activity

POLICE DEPARTMENT REPORT

No report was given.

CITY & COUNTY ATTORNEY'S REPORT

- (a) History of Violations and Penalties Imposed – Report

ADJOURNMENT

The meeting was adjourned at 7:52 p.m.

APPROVAL

Minutes Prepared by *Licia Kegemess*
Deputy City and County Clerk

Approved by *[Signature]*
Chairperson