Meeting

The Local Liquor Licensing Authority of the City of Golden, County of Jefferson, State of Colorado, met in the Council Chambers, City Hall, at 911 10th Street, Golden, Colorado at the hour of 2:30 p.m.

Hearing Officer Kendra L. Carberry, presiding, called the meeting to order. City Clerk Susan Brooks, Deputy City Clerk Andrea L. Banks, Officer Mike Welch, Detective Matt Cole and Associate City Attorney Mary Lynn Benham were also present.

Approval of Minutes of September 28, 2011

The Authority approved the minutes of September 28, 2011.

Show Cause Hearing - Chris Chew, LLC d/b/a Valero One Stop, 17198 S. Golden Road, Golden, CO 80401

City Prosecutor Benham stated that the City and the Licensee have reached a stipulation and that the licensee admits it did sell alcoholic beverages to a person under the age of twenty-one years. She noted that this is a first violation for this licensee. She reviewed the proposed conditions stated in the stipulation agreed to by the licensee and actions taken by the licensee to avoid future violations, stating that the stipulation would serve the interests of the City and the licensee. Chris Chew, owner, was present to answer questions.

The Authority accepted the Joint Stipulation Agreement and its stated conditions as submitted by the City and Chris Chew, LLC d/b/a Valero One Stop, 17198 S. Golden Road, Golden, and ordered that the licensee receive 6 days suspension with 2 days being held in abeyance for 12 months, and 4 days to be served on 4, 5, 6, and 7 December, 2011, with the condition that no other violations occur within the next 12 months.

Show Cause Hearing - Dillon Companies, Inc. d/b/a King Soopers Div. 82, 17171 S. Golden Road, Golden, CO 80401

City Prosecutor Benham stated that the City and the Licensee have reached a stipulation and that the licensee admits it did sell alcoholic beverages to a person under the age of twenty-one years. She noted that this is a second violation for this licensee. She reviewed the proposed conditions stated in the stipulation agreed to by the licensee and actions taken by the licensee to avoid future violations, stating that the stipulation would serve the interests of the City and the licensee. Property manager Barb Osness and store manager JoAnn McCall were present to answer questions.

Robert Dill, attorney for the licensee, noted mitigating factors including that store employees participate in alcohol training, employees use a software program to enter a birth date, receive certification in liquor training and must ID everyone under age 40. The employee who committed the violation did not ask for or check ID and was placed on suspension.
The Authority was also asked to accept and approve a petition submitted by the licensee to pay a fine in lieu of suspension.

The Authority accepted the Joint Stipulation Agreement and its stated conditions as submitted by the City and Dillon Companies, Inc. d/b/a King Soopers Div. 82, 17171 S. Golden Road, Golden, and ordered that the licensee receive 6 days suspension with 2 days being held in abeyance for 12 months, and 4 days to be served on 4, 5, 6, and 7 December, 2011, with the condition that no other violations occur within the next 12 months.

The Authority also accepted the petition to pay a fine in lieu of suspension submitted by Dillon Companies, Inc. d/b/a King Soopers Div. 82, 17171 S. Golden Road, Golden, and ordered the petitioner to serve the 4 days suspension, if the petitioner fails to pay the imposed fine of $226.63 by 5 November 2011.

Renewal - Dillon Companies, Inc. d/b/a King Soopers Div. 82, 17171 S. Golden Road, Golden, CO 80401

The Authority approved the renewal for Dillon Companies, Inc. d/b/a King Soopers Div. 82, 17171 S. Golden Road, Golden.

Show Cause Hearing - Compadres, Inc. d/b/a Tequila’s Family Mexican Restaurant, Inc., 17535 S. Golden Road, Golden, CO 80401

City Prosecutor Benham stated that the City and the Licensee have reached a stipulation and that the licensee admits it did allow alcoholic beverages to be removed from the premises. She noted that this is a second violation for this licensee since the license was issued in 2003. She reviewed the proposed conditions stated in the stipulation agreed to by the licensee and actions that will be taken by the licensee to avoid future violations, stating that the stipulation would serve the interests of the City and the licensee. Rodrigo Sanchez, employee and relative of owners, was present to answer questions.

Thomas E. Kelley, attorney for the licensee, appeared via telephone and stated he had reviewed and approved the stipulation as to form.

The Authority accepted the Joint Stipulation Agreement and its stated conditions as submitted by the City and Compadres, Inc. d/b/a Tequila’s Family Mexican Restaurant, Inc., 17535 S. Golden Road, Golden, conditioned upon all signatures being obtained within 7 days, and ordered that the licensee receive 6 days suspension with 2 days being held in abeyance for 12 months, and 4 days to be served on 4, 5, 6, and 7 December, 2011, with the condition that no other violations occur within the next 12 months.

Show Cause Hearing - Maverick’s Oakpit Grill, LLC d/b/a Maverick’s Oakpit Grill, 1301 Washington Ave., Unit 120, Golden, CO 80401

City Prosecutor Benham stated that the City and the Licensee have reached a stipulation, that the licensee admits to the violations set forth in the stipulation that they did sell alcoholic beverages to a person under the age of twenty-one years, failed to allow inspection of the licensed premises by peace officers for the purpose of inspection and investigation, and failed to report ownership changes within 30
days of such changes. The licensee also agreed to waiver of a hearing on the violations. It was agreed that the city and the licensee could present evidence regarding determination of penalty.

The Authority accepted the Stipulation and Waiver of Hearing on Violations as submitted by the City and Maverick’s Oakpit Grill, LLC d/b/a Maverick’s Oakpit Grill, 1301 Washington Ave., Unit 120, Golden.

Hearing Officer Carberry called to order the hearing to determine penalty. Mike Pietrafeso, owner/member, was present to answer questions.

City Prosecutor Benham stated the city would present evidence of aggravating circumstances and would be seeking a significant suspension.

Mr. Pietrafeso stated that the age and lack of maturity of Mr. Sanchez, who was the manager on duty, was a factor related to the violations, and additionally the managing member Mr. Mora was affected by significant physical health problems while running the business.

Officer Michael Welch, witness for the city, was sworn in and gave the following testimony in response to questions from City Prosecutor Benham. He stated he has been with the Golden Police Department for 21 years, and has had thorough training in identifying visibly intoxicated individuals. He was dispatched with other officers to Maverick’s Oakpit Grill on the evening of August 23, 2011 on a report of a female vomiting on the sidewalk. Upon arrival, he observed a puddle of water where the sidewalk had been washed off. The manager that evening Rafael Sanchez would not allow officers to enter the premises and stated to the officers that the female had already left. Officers then set up an observation perimeter from the parking garage across the street, believing the female was still in the restaurant. Mr. Sanchez was observed looking out the door of the restaurant. A vehicle was observed to pull up to the restaurant and a subject got out of the vehicle, went inside and the vehicle pulled around to the parking area. A Nissan Xterra then pulled into the alley at the rear door of the restaurant. A white female came out, along with a male. Another male came out and ran down the street. He yelled at the police for stopping him, saying he knew his rights. The female was then placed in an ambulance, semi-comatose, unable to stay awake or keep her head up. She was covered with vomit and reeking of alcohol. She was determined to be 20 years old. Officer Welch later spoke with Mr. Sanchez again, who stated he lied because he does not like cops and he was trying to take care of the female subject.

Hannah Morvay, witness for the city, was sworn in and gave the following testimony in response to questions from City Prosecutor Benham. She stated that she was a former employee of Maverick’s and was working the night of August 23, 2011. She stated that after she clocked out, the manager that night Rafael served a number of alcoholic drinks from bottles behind the bar to her and to her 18 year old friend Valeria and some other friends. At one point, Valeria went outside for air, vomited and was helped back inside by Hannah to get cleaned up. Ms. Morvay stated she pulled her Nissan Xterra into the alley by the back door. Rafael opened the door and put Valeria in the car, at which point the police came out from cover. Ms. Morvay stated that Valeria could not stand or sit up and was in very bad condition. Two males at the scene ran off when the police came forward. The police then questioned Valeria and checked on her condition, determining an ambulance was needed and one was called to the scene. Valeria was then transported by ambulance to receive medical attention.
Andrea Banks, Deputy City Clerk, witness for the city, was sworn in and gave the following testimony in response to questions from City Prosecutor Benham. She stated that her duties include working with licensees on liquor license matters, to include processing new applications, transfers of ownership, and other liquor license changes. Ms. Banks stated she meets with applicants by appointment to review the more involved processes and the requirements for filing applications. In regard to Maverick’s changes to their corporate ownership, she stated that she first became aware that the ownership structure had changed when Mr. Mora and Mr. Pietrafeso came to city hall on June 20, 2011, with a revised LLC operating agreement. The document showed that owners had been added to the LLC, and appeared to reflect, based on the notarized signature page included, that those changes had occurred as early as March 20, 2011, while the effective date of the document still appeared to be May 14, 2010. Those conflicting pieces of information raised questions as to when the changes had actually occurred. Ms. Banks identified Exhibit 1 – Pages of Revised Operating Agreement submitted June 20, 2011.

Subsequently, Mr. Mora returned with his liquor license renewal application, stating that this document is what prompted him to bring in the revised operating agreement. Ms. Banks noted the renewal form has a statement at the top directing licensees to report any changes in ownership via form DR 8177. Ms. Banks told Mr. Mora that the owners would need to meet with her to go over the process for submitting the application to report these ownership changes, which are supposed to reported within 30 days of when the changes occurred. An initial meeting was scheduled for July 5, 2011. Ms. Banks then notified the owners that she needed to reschedule that meeting due to another conflict. Mr. Mora said he would contact her for a new appointment. Several weeks passed and Ms. Banks did not hear back from anyone, so a letter was sent to Mr. Mora on July 19, 2011, requesting that he contact her to reschedule a meeting so that application documents could be submitted no later than the end of July. The owners met with Ms. Banks on July 26, 2011, at which meeting she reviewed the Corporate Report of Changes application and associated required documents. Another several weeks passed and no paperwork had been submitted. Ms. Banks sent a letter on August 18, 2011, requesting that required paperwork be turned in no later than August 24, 2011. One of the owners, BJ Harris, who had stated at the meeting that he would be the point person for overseeing the completion of the paperwork, left a voicemail for Ms. Banks on September 1, 2011, indicating he had a very important question. Ms. Banks returned the call and left a message but did not hear anything further from Mr. Harris. Ms. Banks identified Exhibit 2 – Letter dated August 19, 2011, sent to Mr. Mora, requesting documents by August 24th.

Ms. Banks stated that Mr. Pietrafeso then turned in the Corporate Report of Changes application and associated documents on September 29, 2011. Ms. Banks identified Exhibit 3 – Report of Corporate Changes, and related paperwork received by the City Clerk’s office on September 29, 2011. The documents were reviewed and found incomplete, then returned to Mr. Pietrafeso on October 4. Ms. Banks reminded him he needed to follow the detailed checklist that is part of the document to ensure it was completed properly. It was resubmitted on October 7, 2011 and remains incomplete, missing the following items:

a. Item #2 on application is blank and missing State Tax Account number
b. Item #3 on application is blank and missing State Liquor License number
c. Item #8 on application was to have a statement included explaining that these owners being added each have a percentage ownership that replace a portion of Manny Mora’s 100% ownership, which is now reduced to 30% according to the revised operating agreement submitted June 20, 2011. There was a timeline document attached.
d. Item #10 on application is blank and missing registered agent information.
e. The owners were supposed to provide motor vehicle records and have not.

f. Michael Pietrafeso’s Individual History Record in Item #1 is blank and missing the name of the business.

g. The cashier’s check for the fingerprint cards was returned by CBI because the amount was incorrect.

h. Item #9 on application is incomplete and does not reflect all owners who have 10% or more ownership based on the revised operating agreement that was submitted.

Ms. Banks stated that the application still did not adequately report the changes in ownership for the LLC, remained incomplete and was not ready to be forwarded to State Liquor Enforcement at this time.

Mr. Pietrafeso was sworn in and gave the following testimony. He stated that every effort was made to complete the paperwork correctly. Mr. Harris was working on the paperwork, Mr. Mora was receiving the letters and not telling the others about them, and Mr. Pietrafeso could not complete the paperwork because it would be a violation of his SEC classification. Mr. Pietrafeso said he was terribly sorry that Mr. Sanchez was serving minors and that the young lady got ill. Mr. Pietrafeso submitted Exhibit A, a statement in response to the violations. He stated that Mr. Mora was encouraged not to let Mr. Sanchez close, and that Mr. Sanchez was let go after ownership was notified by the Golden Police Department that Mr. Sanchez had kept the restaurant open after hours, served alcohol to a minor and obstructed justice. Mr. Pietrafeso reviewed other guidelines that have since been put into place regarding the service of alcohol. He stated that Mr. Mora is on an extended medical leave of absence and has been told that the other owners did not want to talk to him until August of next year. He stated that Mr. Mora is still the managing member of the LLC. He said someone else would be designated as the managing member at some point.

City Prosecutor Benham stated that regarding the violations that occurred August 23, 2011, including that the manager at that time denied access to police officers who were conducting an investigation, and the manager served alcohol to an 18 year old who became severely intoxicated, as well as the testimony regarding the ongoing ordeal to request the submission of a correctly completed report of corporate ownership changes, the city was requesting a 10 to 14 day suspension with no days held in abeyance, in particular based on the severity of the violation on August 23, 2011. She stated, moreover, there is another alleged violation to be presented to the Authority and that the licensee appears to have an ongoing problem in the conduct of its establishment in regard to serving alcohol to minors, serving after hours and taking their liquor license responsibilities seriously.

Hearing Officer Carberry stated that she was concerned about the events that occurred at Maverick’s on August 23, 2011, including that a manager served alcohol to an 18 year old who became severely intoxicated, and refused to allow police officers to inspect the premises for purposes of investigation. She noted that the licensee faced potential serious criminal and civil liability. She stated that she finds there are severe aggravating circumstances that warrant a significant sanction. She recommended that the licensee get its affairs together in regard to the management and operation of the business and also file the required paper work properly. She strongly suggested getting the assistance of an attorney.
The Authority ordered that the licensee receive 12 days suspension with all 12 days to be served on 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 December, 2011, with the condition that no other violations occur within the next 12 months.

**Renewal - Maverick’s Oakpit Grill, LLC d/b/a Maverick’s Oakpit Grill, 1301 Washington Ave., Unit 120, Golden, CO 80401**

City Prosecutor Benham stated that the City was requesting that the renewal be set for hearing and entered into the record a Notice of Renewal Hearing, noting the violations the licensee had already admitted. She advised the Authority of the following from the State of Colorado Liquor Code:

1. In accordance with C.R.S. § 12-47-302, the Authority may refuse to renew any license for "good cause" subject to judicial review.

2. Good cause, for the purpose of a denying a license renewal, in part, includes:
   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;

   b. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings;

   C.R.S. § 12-47-103(9).

3. Colorado Liquor Code Regulation 47-900(A), "Conduct of Establishment," requires that a liquor licensee conduct the premises in a decent, orderly, and respectable manner.

4. C.R.S. § 12-47-901(5)(a)(I) provides, in part, that it is unlawful for a liquor licensee to permit any employee under twenty-one years of age to sell or dispense malt, vinous, or spirituous liquors unless he or she is supervised by another person who is on premise and has attained twenty-one years of age.

5. Pursuant to C.R.S. § 12-47-307(1)(a)(V), no liquor license shall be held by any person employing any other person who is not of good character and reputation satisfactory to the respective licensing authorities.

She further advised the Authority of the following alleged violations:

- The City Attorney's Office was advised, pursuant to a Golden Police Department investigation, that on October 13, 2011, two of Licensee's male employees, one of whom was under the age of 21 years old, allegedly served alcohol beverages to a female employee who was under the age of 21 years, and to the female employee's female friend, who was also under the age of 21 years. Additionally, the two females reported to the Golden Police Department that there was unlawful sexual contact from one of the male employees.
- The City Attorney's Office was advised, pursuant to a Golden Police Department investigation into the alleged unlawful sexual contact referenced above, that the male employee involved in the alleged unlawful contact had a valid warrant out for his arrest related to a felony criminal charge in another jurisdiction.

- The City Attorney's Office was advised, pursuant to a Golden Police Department investigation into the alleged sexual assault referenced above, that the male employee involved in the alleged unlawful sexual contact provided a U.S. Passport for identification which showed that he is under the age of 21 years. Further, the investigation shows that the only employee in the establishment on the night of October 13, 2011, who was over the age of 21 years was the head cook for the establishment's kitchen, who did not have supervisory authority over the other employees present that night.

The notice referenced the following State of Colorado Liquor Code sections:

- Such incidents, if proven, demonstrate a pattern of intentional service of alcohol by Licensee or its employees to persons under the age of 21 years, in violation of C.R.S. § 12-47-901(1)(a.5)(I) and 12-47-901(5)(a)(I).

- Such incidents, if proven, demonstrate a failure by Licensee to operate the establishment in a decent, orderly, and respectable manner, as required by Colorado Liquor Code Regulation 47-900(A).

- The information provided to the Authority by the City Attorney's office demonstrates probable cause that the Licensee has violated C.R.S. § 12-47-901(5)(a)(I), which makes it unlawful for a person under the age of 21 years to sell or dispense alcohol when not under the supervision of a person over the age of 21 years.

- Such information also demonstrates probable cause that the Licensee has violated C.R.S. § 12-47-307(1)(a)(V), which prohibits a person from holding a liquor license who employs another person who is not of good character and reputation satisfactory to the Authority.

Hearing Officer Carberry also noted that the renewal application appeared incomplete.

The Authority further reviewed the Notice of Renewal Hearing provided by City Prosecutor Benham, and set the Renewal for hearing on November 9, 2011 at 2:30 p.m.

**Other Matters**

There were no other matters.

**Adjournment**

There being no further business to come before the Authority, the meeting adjourned at 4:14 p.m.
Susan M. Brooks, City Clerk, MMC
Secretary to the Local Licensing Authority

Approved by Licensing Authority:

Hearing Officer Kendra Carberry