

CARSON CITY LIQUOR AND ENTERTAINMENT BOARD

Minutes of the July 16, 2009 Meeting

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A meeting of the Carson City Liquor and Entertainment Board was held during the regularly scheduled Board of Supervisors meeting on Thursday, July 16, 2009 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

PRESENT: Chairperson Robert Crowell
Member Shelly Aldean
Member Pete Livermore
Member Ray Saylo
Member Molly Walt
Member Robin Williamson

STAFF: Larry Werner, City Manager
Alan Glover, Clerk - Recorder
Neil Rombardo, District Attorney
Kathleen King, Recording Secretary

NOTE: A recording of these proceedings, the board's agenda materials, and any written comments or documentation provided to the Clerk during the meeting are public record. These materials are on file in the Clerk-Recorder's Office, and available for review during regular business hours.

10. CALL TO ORDER AND ROLL CALL (8:38:46) - Chairperson Crowell called the meeting to order at 8:38 a.m. Roll was called; a quorum was present, including Member Ray Saylo.

11. ACTION ON APPROVAL OF MINUTES - May 21, 2009 and June 4, 2009 (8:39:04) - Member Aldean noted a previously-stated correction to page 2 of the June 4, 2009 minutes. **Member Aldean moved to approve the minutes of the May 21, 2009 meeting, as presented. Member Williamson seconded the motion. Motion carried 6-0. Member Aldean moved to approve the minutes of the June 4, 2009 meeting, as corrected. Member Williamson seconded the motion. Motion carried 6-0.**

12. PUBLIC WORKS BUSINESS LICENSE

12(A) ACTION TO APPROVE CARL MILLER AS THE LIQUOR MANAGER FOR THE WIZE GUYZ FULL BAR LIQUOR LICENSE NO. 10-26549, LOCATED AT 288 EAST WINNIE LANE, CARSON CITY - Withdrawn.

12(B) DISCIPLINARY ACTION AGAINST LIQUOR LICENSE NO. 10-16622, HELD BY RED HAWK VENTURES, LLC, CLETUS WANDLER DBA SILVER DOLLAR CASINO, LOCATED AT 1897 NORTH EDMONDS DRIVE, CARSON CITY, NEVADA, PURSUANT TO CCMC 4.13.150; THIS DISCIPLINARY ACTION IS BASED ON THE ISSUANCE OF A CITATION FOR A SECOND OFFENSE CRIMINAL STATUTE VIOLATION WITHIN SIX MONTHS OF THE FIRST CITATION ISSUANCE RELATED TO THE SALE OF LIQUOR AT THE LICENSED PREMISES; THIS ACTION MAY INCLUDE THE IMPOSITION OF A FINE OF UP TO \$500.00 ON THE LICENSEE AND THE REQUIREMENT THAT THE LICENSEE AND ALL EMPLOYEES SELLING, DISPENSING, OR SERVING LIQUOR ATTEND THE SHERIFF'S OFFICE ALCOHOL SERVERS TRAINING PROGRAM WITHIN THREE MONTHS OF THIS HEARING; IF THE LICENSEE AND RELEVANT EMPLOYEES ARE REQUIRED TO ATTEND THE ALCOHOL SERVERS TRAINING PROGRAM, THE LICENSEE WILL BE

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REQUIRED TO SUBMIT A LIST OF ALL EMPLOYEES SELLING, DISPENSING, OR SERVING LIQUOR TO THE PUBLIC WORKS DEPARTMENT BUSINESS LICENSE DIVISION NO LATER THAN SEVEN (7) DAYS FROM THE COMPLETION OF THE TRAINING; IF THE LICENSEE FAILS TO SUBMIT THE LIST OF EMPLOYEES WITHIN SEVEN (7) DAYS, THIS MATTER WILL BE RESCHEDULED FOR THE NEXT CARSON CITY LIQUOR BOARD MEETING TO SHOW CAUSE AS TO WHY FURTHER DISCIPLINARY ACTION SHOULD NOT BE IMPOSED (8:40:36) - Principal Planner Jennifer Pruitt introduced this item by reading the title into the record. She noted that the first offense occurred on May 22, 2009 and the second on July 3, 2009.

(8:42:52) Cletus Wandler advised of having required all his employees to sign a commitment to request the identification of all customers ordering alcoholic beverages. He suggested that his employee had lied to him, and expressed opposition to a business owner being subject to an employee's sabotage. He discussed the difficulties inherent in controlling the actions of employees.

Member Aldean expressed sympathy over the issue of vicarious liability, and advised that it applies to the City as well. In response to a question, Mr. Wandler advised that he has not installed IDVisors in his establishment. He expressed the opinion that the devices would be worthless without the full cooperation of the employees. He acknowledged requiring his employees to attend mandatory training in addition to requiring their signature on the previously-noted commitment, acknowledging their understanding of termination and a \$625 fine as the result of serving alcohol to a minor. He further acknowledged that both employees involved in the incidents giving rise to this hearing had been terminated. He suggested that any employee caught serving alcohol to a minor should be arrested. "The Sheriff's Department just leaves them there." Mr. Wandler referenced the Carson Nugget's third offense, and requested a concession.

Member Walt expressed the belief that the Sheriff's Office compliance check operations "are working." Mr. Wandler expressed agreement with Member Walt's comments, but disagreed "that you should take it out on the person that owns the business that can't control 75 employees. I can't be there 24/7." Member Williamson provided an overview of the progressive disciplinary action imposed on the Carson Nugget through its third violation. She expressed empathy for Mr. Wandler's situation, and discussed the challenge of ensuring that alcohol is not served to minors in our community. Mr. Wandler reiterated he has no control over all his employees all the time, and discussed the cost associated with obtaining his liquor license. In response to a question, Mr. Wandler discussed the process associated with minors who are caught gambling. He acknowledged no repercussion to the gaming licensee. If an employee is at fault, the employee's gaming card is confiscated. Mr. Wandler advised that one of the offending employees involved in the incidents giving rise to this hearing had a "job down the street at another bar" two days later. Discussion followed.

Member Livermore expressed sympathy for Mr. Wandler's situation, and acknowledged the difficulty associated with enforcing laws "which may not be applied equally." He discussed the struggle, "over the past year, ... to find a reasonable balance that would work." In response to a question, Mr. Wandler was uncertain as to the actual fine imposed on the offending employees during the criminal proceedings. Member Livermore discussed the professionalism of Sheriff's Office employees during compliance check operations. He requested the board's consideration of a lesser fine, and reiterated understanding for Mr. Wandler's situation.

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Chairperson Crowell entertained public comment and, when none was forthcoming, a motion. **Member Walt moved to impose disciplinary action against liquor license no. 10-16622, held by Red Hawk Ventures, LLC, Cletus Wandler, dba Silver Dollar Casino, located at 1897 North Edmonds Drive, Carson City, Nevada, pursuant to CCMC 4.13.150; this disciplinary action is based on the issuance of a citation for a second offense criminal statute violation within six months of the first citation issuance related to the sale of liquor at the licensed premises; this action may include the imposition of a fine of up to \$500.00 on the licensee and the requirement that the licensee and all employees selling, dispensing, or serving liquor attend the Sheriff's Office alcohol servers training program within three months of this hearing; if the licensee and relevant employees are required to attend the alcohol servers training program, the licensee will be required to submit a list of all employees selling, dispensing, or serving liquor to the Public Works Department Business License Division no later than seven days from the completion of the training; if the licensee fails to submit the list of employees within seven days, this matter will be rescheduled for the next Carson City Liquor Board meeting to show cause as to why further disciplinary action should not be imposed.** Member Walt acknowledged the intent of the motion to impose the \$500 fine and require the alcohol servers training for all employees. **Member Williamson seconded the motion.** In response to a question, Member Walt refused to consider a lesser fine of \$250.00.

In consideration of consistency and "sending a message," Member Williamson expressed concern over exercising discretion in the imposition of the fine. She reiterated sympathy over the liquor license holders' situations in terms of vicarious liability. "You have to work as hard as possible to establish an atmosphere of compliance with the law and that means, perhaps, stronger management training ..." Member Aldean expressed agreement with the importance of consistency. She reiterated her concern over vicarious liability, but noted "that's the law." She expressed more of a willingness to consider discretion "when an applicant comes before us and they have done everything humanly possible to address ... the selling of liquor to underage customers. That means having the IDVisors." She expressed uncertainty that, in this case, "everything has been done to comply with the law in terms of avoiding this." She provided an overview of the steps taken by Carson Nugget representatives to prevent the sale of alcohol to minors. Member Walt expressed agreement with the importance of consistency, and reiterated "this is working." She referred to a recent *Nevada Appeal* article, and stated "everyone passes alcohol checks." She advised that Douglas County has even stricter laws and corresponding penalties.

In reference to the next agenda item, Member Livermore discussed possible modifications to the subject procedure. In response to a question, Mr. Rombardo advised that serving alcohol to a minor is a misdemeanor offense. He suggested the possibility that a condition of sentence could include Carson City requesting the revocation of the alcohol server's work card. Member Aldean suggested considering amendment to the Carson City Municipal Code to make mandatory the revocation of the alcohol server's work card at some point in the process. Mr. Werner was uncertain as to whether an alcohol server's card is issued, and advised that staff will follow up.

Chairperson Crowell expressed sympathy for the predicament of Mr. Wandler and other licensees in consideration of vicarious liability. On the other hand, he noted that a liquor license is a privilege granted by government and "there has to be some form of obligation that attaches to that privilege." He expressed concern over the board sitting as fact finders in a disciplinary proceeding. Mr. Rombardo cautioned against straying further from the agenda item. Chairperson Crowell called for a vote on the pending motion; **motion carried 6-0.**

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12(C) DISCUSSION ON THE PROPOSED MODIFICATIONS RELATING TO THE DISCIPLINARY ACTION PROCEDURE AND PENALTIES FOR LIQUOR LICENSE VIOLATIONS AND POSSIBLE DIRECTION TO STAFF TO BRING FORTH AMENDMENTS TO THE MUNICIPAL CODE (9:09:36) - Senior Permit Technician Lena Tripp introduced this item by reading the title into the record. She advised of having been requested by Sheriff Ken Furlong to request the board's additional consideration of deputy sheriffs holding liquor licenses.

Chairperson Crowell provided an overview of the options delineated in the July 16, 2009 memorandum included in the agenda materials. Discussion ensued. Ms. Pruitt advised that the City of Reno is in the process of revising their liquor license ordinance. In reference to Member Walt's earlier comments, Ms. Pruitt discussed Douglas County's stricter liquor license laws and penalties for violation. In response to a question, she reviewed the progressive penalties associated with violation of liquor license laws in Douglas County. Additional discussion took place regarding the options delineated in the July 16th memorandum.

Member Williamson suggested deferring further discussion until such time as more information is available. She inquired as to who would serve as the hearing officer, whether or not an alcohol server card is required in Carson City, the parameters associated with federal grants which fund the compliance check operations, whether there is a pattern associated with failed compliance checks, and whether requiring a liquor license holder to appear in public is a sufficient deterrent.

In reference to the question regarding an alcohol server's card, Mr. Rombardo read the provisions of CCMC Section 4.13.170 into the record and noted a reference to CCMC Section 8.28. He noted the costs associated with hiring a hearing officer or appointing *pro tem* judges. He discussed the common practice of district attorneys and attorneys general to "have one person sit as the hearing officer and one person sit as ... the prosecutor working with whoever enforces it." He discussed other options for a City official to serve as a hearing officer.

Member Saylo advised that the Sheriff's Office has not issued work cards for liquor sales in the past several years. He further advised that underage drinking enforcement operations "generally start about 3:00 in the afternoon and generally run until about 8:00 or 9:00 in the evening." None of the grant administration reporting requirements include documenting arrests or citations. "They do require us to show compliance." Member Saylo advised of Sheriff Furlong's preference for a "hearings officer-type of system."

In reference to Members Williamson and Walt's comments, Member Aldean expressed the opinion that "the exposure to the light of day has had ... a sobering effect on the people who have liquor licenses." She discussed support for amending the municipal code to require the issuance of an alcohol servers work card. Member Saylo expressed agreement, and related anecdotal information. Member Aldean expressed the further opinion that appointing a hearing officer, at least on a trial basis, would be productive. She suggested the hearing officer could be requested to provide quarterly reports to the board.

Mr. Werner expressed support for re-instituting the work card system and for appointing a hearing officer. He suggested implementing an administrative process for the first and second offenses, and that a hearing officer would have jurisdiction over a third offense. He proposed various options for the administrative and hearing officer processes, and discussion followed.

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Member Williamson suggested directing staff to draft provisions for “an automatic first, ... a second of \$500 with some kind of appeal possible to a hearing officer, and the third offense would go to a hearing officer with some kind of appeal possible, with a fine of up to \$1,500. And also to implement the work card program for liquor serving,” and to have some kind of draft provision to allow for public safety officials to hold liquor licenses in the county where they work. In response to a question, Mr. Rombardo advised of having seen no prohibition, in the ordinance, against a public safety officer holding a liquor license in the county where they work. Following a brief discussion, Member Williamson suggested agendaizing a specific agenda item for a future meeting.

Member Livermore suggested requesting input from some of the liquor license holders. Mr. Werner advised that the current ordinance was developed in just such a manner. “We invited every liquor license holder to a meeting and workshops and we discussed the entire program that we’re currently operating under. ... The group’s response was a unanimous ‘Yes, this looks like a good program.’” Member Livermore discussed the importance of liquor license holders taking responsibility for their employees.

Chairperson Crowell requested staff to also include a determination of what constitutes exculpatory conduct on behalf of the licensee. Mr. Werner advised that staff will work with the District Attorney’s office. Chairperson Crowell requested information as to the Gaming Control Board’s process for addressing the situation of a licensee’s employee allowing a minor to gamble. Mr. Werner acknowledged sufficient direction.

Chairperson Crowell opened this item to public comment. (9:35:16) John Wagner commended the discussion, and inquired as to the number of alcohol servers who have been arrested twice. He suggested that the alcohol server’s work card should be revoked immediately upon a first violation. He inquired as to whether alcohol servers work between counties, and suggested that habitual violators should be ineligible for a work card.

(9:36:18) Steve MacIntyre, representing the AM / PM stores, expressed support for appointing a hearing officer. “We’re doing everything we possibly can to control this.” Mr. MacIntyre advised of having met with the Sheriff on Tuesday, July 14th, and suggested “this is a step in the right direction for somebody to be able to take a look at what we’re doing rather than just fining us right away because of somebody’s mistake, somebody’s grudge ...” He expressed support for the work card process. He acknowledged that children are kept away from slot machines in AM / PM stores. “If we suspect they’re not old enough, we card them.” He reviewed AM / PM store procedures to prevent the sale of alcohol to minors.

Chairperson Crowell called for additional public comment; however, none was forthcoming. Member Aldean expressed support for implementing the alcohol servers card process for bars and stores. Chairperson Crowell commended the discussion.

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13. ACTION TO ADJOURN (9:39:46) - Chairperson Crowell adjourned the meeting at 9:39 a.m.

The Minutes of the July 16, 2009 Carson City Liquor and Entertainment Board meeting are so approved this _____ day of August, 2009.

ROBERT L. CROWELL, Chair

ATTEST:

ALAN GLOVER, Clerk - Recorder