



TOWN OF AVON, COLORADO
AVON LIQUOR LICENSING AUTHORITY MEETING FOR TUESDAY, OCTOBER 25, 2011
MEETING BEGINS AT 5 PM
AVON TOWN HALL, ONE LAKE STREET

PRESIDING OFFICIALS
CHAIRMAN RICH CARROLL
VICE CHAIRMAN KRISTI FERRARO
BOARD MEMBERS DAVE DANTAS, CHRIS EVANS, TODD GOULDING
AMY PHILLIPS, ALBERT "BUZ" REYNOLDS, JR.

TOWN STAFF
TOWN ATTORNEY: ERIC HEIL TOWN MANAGER: LARRY BROOKS TOWN CLERK: PATTY MCKENNY

ALL LIQUOR BOARD MEETINGS ARE OPEN TO THE PUBLIC EXCEPT EXECUTIVE SESSIONS
COMMENTS FROM THE PUBLIC ARE WELCOME DURING PUBLIC HEARINGS
PLEASE VIEW AVON'S WEBSITE, [HTTP://WWW.AVON.ORG](http://www.avon.org), FOR MEETING AGENDAS AND MEETING MATERIALS
AGENDAS ARE POSTED AT AVON TOWN HALL AND RECREATION CENTER, ALPINE BANK, AND AVON LIBRARY

1. ROLL CALL

2. INQUIRY OF THE PUBLIC FOR COMMENT AND APPROVAL OF AGENDA

3. RENEWAL OF LIQUOR LICENSES

- a. Applicant: R&E Enterprise LLC, d/b/a Gondola Pizza
Address: 240 Chapel Place, #113
Manager: Claudiu Popa
Type: Hotel & Restaurant Liquor License
- b. Applicant: Duong, Inc. d/b/a Panda City
Address: 222 Beaver Creek Place
Manager: Thanh Quy Duong
Type: Hotel & Restaurant Liquor License
- c. Applicant: Avon Properties Leasing, LLC, d/b/a Village Warehouse Wines
Address: 101 Fawcett Road
Manager: Peter Cuccia
Type: Retail Liquor Store License

4. REPORT OF CHANGES: CHANGE OF TRADE NAME

- b. Applicant: TCF 1 d/b/a Zacca Za
New Name: TCF 1 d/b/a Castle Peak Grille
Address: 0101 Fawcett Road, Suite 100
Manager: Dan Leary
Type: Hotel and Restaurant Liquor License

5. PUBLIC HEARING FOR NEW HOTEL AND RESTAURANT LIQUOR LICENSE


- a. Applicant: Northside Coffee & Kitchen, LLC d/b/a Northside Coffee & Kitchen
Address: 20 Nottingham Road, Units A & C
Manager: James Pavelich
Type: Hotel & Restaurant Liquor License



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6. **REVIEW OF LIQUOR LICENSE VIOLATION AND ACTION ON WHETHER OR NOT TO ISSUE A NOTICE OF HEARING AND ORDER TO SHOW CAUSE**
 - a. Avon Police Incident Case Report No. 2011-000740 dated August 26, 2011 (Greg Daly, Lieutenant)
Establishment Name: East West Resort, LLC & Riverfront Village Restaurant, LLC d/b/a Westin Riverfront Resort & Spa
Address: 126 Riverfront Lane
Manager: Bob Trotter
Type: Hotel and Restaurant Liquor License
Proposed Action: Resolution No. 11-02, Series of 2011, Resolution Finding Probable Cause To Believe That East West Resort, LLC & Riverfront Village Restaurant, LLC d/b/a Westin Riverfront Resort & Spa Has Violated A Law, Rule Or Regulation With Respect To The Operation Of Its Licensed Premises; Setting A Hearing With Respect Thereto; And Directing The Issuance And Service Of A Notice Of Hearing And Order To Show Cause As To Why The Hotel and Restaurant Liquor License Of Such Licensee Should Not Be Suspended Or Revoked or Renewed *(Eric Heil, Town Attorney) Possible action by Liquor Board related to Avondale Restaurant located at Westin Riverfront Resort & Spa Violation & Case Report No. 2011-000740*
7. **CONSENT AGENDA:**
 - a. Minutes from October 11, 2011
8. **ADJOURNMENT**

Memo

To: Avon Liquor Licensing Authority
Thru: Larry Brooks, Town Manager
cc: Eric Heil, Town Attorney
From: Debbie Hoppe, Court Clerk
Patty McKenny, ATM Management Services 
Date: October 17, 2011
Re: Renewal of Liquor Licenses

Summary:

The Town Council serving as the Avon Liquor Licensing Authority will consider the following liquor license applications for renewal at its board meeting next week:

- a. Applicant: R&E Enterprise LLC, d/b/a Gondola Pizza
Address: 240 Chapel Place, #113
Manager: Claudiu Popa
Type: Hotel & Restaurant Liquor License
- b. Applicant: Duong, Inc. d/b/a Panda City
Address: 222 Beaver Creek Place
Manager: Thanh Quy Duong
Type: Hotel & Restaurant Liquor License
- c. Applicant: Avon Properties Leasing, LLC, d/b/a Village Warehouse Wines
Address: 101 Fawcett Road
Manager: Peter Cuccia
Type: Retail Liquor Store License

Background & Discussion:

Colorado Liquor Code, 12-47-302, provides for guidelines related to liquor licensing renewals; applications for the renewal of an existing license shall be made to the local licensing authority. The Town Clerk, Town Attorney, and Police Department have reviewed the applications submitted referenced above and the materials are in order. The Police Report results are summarized below:

- a. Gondola Pizza had no calls for service in the past year.
- b. Panda City had no calls for service in the past year.
- c. Village Warehouse Wines had no calls for service in the past year.

The Liquor Authority Board has broad discretion to consider any character issues related to the licensee holder at renewal in the same manner as granting a license. There have been various types of behavior, such as failure to pay taxes and fraud that have been held in the courts as valid reason to find the applicant does not possess character. The Colorado Liquor Code §12-47-302 sets forth the local authority's ability to hold a hearing on the application for renewal.

Managers from the three businesses respectively, have been invited to attend the Liquor Board meeting.

Financial Implications:

There are local and state liquor licensing fees associated with renewal applications that have been submitted to the Town.

Town Manager Comments:



Attachments:

- State of Colorado Forms for Liquor License Renewals
- Avon Police Department Background Memo & Incident / Investigation Report

Memo

To: Avon Local Liquor Licensing Authority
Thru: Larry Brooks, Town Manager
Eric Heil, Town Attorney
From: Patty McKenny, Assistant Town Manager Management Services 
Date: October 20, 2011
Re: Report of Changes: Change Trade Name Permit for TCF 1 d/b/a Zacca Za

Summary:

The Town Council serving as the Local Liquor Authority will consider and is asked to act upon a Report of Change for a Change in Trade Name for TCF 1, LLC d/b/a Zacca Za. The new name is noted to be Castle Peak Grille.

Discussion:

The Colorado Liquor Code of Regulations Section 12-47-306, Change of Trade Name, states that No licensee shall change the name or trade name of the licensed premises without submitting written notice to the local and state licensing authorities, not less than ten days prior to the change of name. The appropriate paperwork was completed & is attached for your review. The restaurant was temporarily closed but now open for business.

Financial Implications: The applicant has submitted the appropriate state and local fees for this application.

Town Manager Comments:

Attachments:

- ✓ Report of Changes (Form DR 8177)

Received
 OCT 11 2011
 Liquor Enf Div.

FOR DEPARTMENT USE ONLY

PERMIT APPLICATION AND REPORT OF CHANGES

CURRENT LICENSE NUMBER 28-44637-0000
 ALL ANSWERS MUST BE PRINTED IN BLACK INK OR TYPEWRITTEN
 LOCAL LICENSE FEE \$ 50
 APPLICANT SHOULD OBTAIN A COLORADO LIQUOR & BEER CODE BOOK TO ORDER CALL (303) 370-2165

1. Applicant is a		PRESENT LICENSE NUMBER
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company		28-44637-0000
2. Name of Licensee <u>TCFI</u>		3. Trade Name <u>Zucca Za</u> Processed by RC #6
4. Location Address <u>0101 Fawcett Rd. Suite 100</u>		OCT 06 2011
City <u>Avon</u>	County <u>Eagle</u>	ZIP <u>81620</u>

SELECT THE APPROPRIATE SECTION BELOW AND PROCEED TO THE INSTRUCTIONS ON PAGE 2.

Section A - Manager reg/change	Section C
• License Account No. _____ 1983-750 (999) <input type="checkbox"/> Manager's Registration (Hotel & Restr.)...\$75.00 2012-750 (999) <input type="checkbox"/> Manager's Registration (Tavern).....\$75.00 <input type="checkbox"/> Change of Manager (Other Licenses) NO FEE	2210-100 (999) <input type="checkbox"/> Retail Warehouse Storage Permit (ea) \$100.00 2200-100 (999) <input type="checkbox"/> Wholesale Branch House Permit (ea).... 100.00 2260-100 (999) <input checked="" type="checkbox"/> Change Corp. or Trade Name Permit (ea) . 50.00 2230-100 (999) <input type="checkbox"/> Change Location Permit (ea)..... 150.00 2280-100 (999) <input type="checkbox"/> Change, Alter or Modify Premises \$150.00 x _____ Total Fee _____
Section B - Duplicate License	
• Liquor License No. _____ 2270-100 (999) <input type="checkbox"/> Duplicate License\$50.00	2220-100 (999) <input type="checkbox"/> Addition of Optional Premises to Existing H/R \$100.00 x _____ Total Fee _____ 1988-100 (999) <input type="checkbox"/> Addition of Related Facility to Resort Complex \$75.00 x _____ Total Fee _____

DO NOT WRITE IN THIS SPACE - FOR DEPARTMENT OF REVENUE USE ONLY


DATE LICENSE ISSUED	LICENSE ACCOUNT NUMBER	PERIOD
	<u>28-44637</u>	<u>10/11</u>
-750 (999)	2260 -100 (999)	TOTAL AMOUNT DUE \$ <u>50.00</u>

The State may convert your check to a one time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your bank account electronically.

STORAGE PERMIT	<p>5. Retail Warehouse Storage Permit or a Wholesalers Branch House Permit</p> <p><input type="checkbox"/> Retail Warehouse Permit for:</p> <p style="margin-left: 20px;"><input type="checkbox"/> On-Premises Licensee (Taverns, Restaurants etc.)</p> <p style="margin-left: 20px;"><input type="checkbox"/> Off-Premises Licensee (Liquor stores)</p> <p><input type="checkbox"/> Wholesalers Branch House Permit</p> <p>Address of storage premise: _____</p> <p>City _____, County _____, Zip _____</p> <p>Attach a deed/ lease or rental agreement for the storage premises. Attach a detailed diagram of the storage premises.</p>				
CHANGE TRADE NAME OR CORPORATE NAME	<p>6. Change of Trade Name or Corporation Name</p> <p><input type="checkbox"/> Change of Trade name / DBA only</p> <p><input type="checkbox"/> Corporate Name Change (Attach the following supporting documents)</p> <p style="margin-left: 20px;">1. Certificate of Amendment filed with the Secretary of State, or</p> <p style="margin-left: 20px;">2. Statement of Change filed with the Secretary of State, <u>and</u></p> <p style="margin-left: 20px;">3. Minutes of Corporate meeting, Limited Liability Members meeting, Partnership agreement.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">Old Trade Name <i>Eccozal</i></td> <td style="width: 50%; padding: 2px;">New Trade Name <i>Castle Peak Grille</i></td> </tr> <tr> <td style="padding: 2px;">Old Corporate Name <i>TCF1</i></td> <td style="padding: 2px;">New Corporate Name <i>TCF1</i></td> </tr> </table>	Old Trade Name <i>Eccozal</i>	New Trade Name <i>Castle Peak Grille</i>	Old Corporate Name <i>TCF1</i>	New Corporate Name <i>TCF1</i>
Old Trade Name <i>Eccozal</i>	New Trade Name <i>Castle Peak Grille</i>				
Old Corporate Name <i>TCF1</i>	New Corporate Name <i>TCF1</i>				
CHANGE OF LOCATION	<p>7. Change of Location</p> <p>NOTE TO RETAIL LICENSEES: An application to change location has a local application fee of \$750 payable to your local licensing authority. You may only change location within the same jurisdiction as the original license that was issued. Pursuant to 12-47-311 (1) C.R.S. Your application must be on file with the local authority thirty (30) days before a public hearing can be held.</p> <p>Date filed with Local Authority _____ Date of Hearing _____</p> <p>(a) Address of current premises _____</p> <p style="margin-left: 20px;">City _____ County _____ Zip _____</p> <p>(b) Address of proposed New Premises (Attach copy of the deed or lease that establishes possession of the premises by the licensee)</p> <p style="margin-left: 20px;">Address _____</p> <p style="margin-left: 20px;">City _____ County _____ Zip _____</p> <p>(c) New mailing address if applicable.</p> <p style="margin-left: 20px;">Address _____</p> <p style="margin-left: 20px;">City _____ County _____ State _____ Zip _____</p> <p>(d) Attach detailed diagram of the premises showing where the alcohol beverages will be stored, served, possessed or consumed. Include kitchen area(s) for hotel and restaurants.</p>				

CHANGE OF MANAGER	<p>8. Change of Manager or to Register the Manager of a Tavern or a Hotel and Restaurant liquor license.</p> <p>(a) Change of Manager (attach Individual History DR 8404-I H/R and Tavern only)</p> <p>Former manager's name _____</p> <p>New manager's name _____</p> <p>(b) Date of Employment _____</p> <p>Has manager ever managed a liquor licensed establishment?..... Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Does manager have a financial interest in any other liquor licensed establishment?..... Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, give name and location of establishment _____</p>	
MODIFY PREMISES OR ADDITION OF OPTIONAL PREMISES OR RELATED FACILITY	<p>9. Modification of Premises, Addition of an Optional Premises, or Addition of Related Facility</p> <p>NOTE: Licensees may not modify or add to their licensed premises until approved by state and local authorities.</p> <p>(a) Describe change proposed _____</p> <p>_____</p> <p>(b) If the modification is temporary, when will the proposed change:</p> <p>Start _____ (mo/day/year) End _____ (mo/day/year)</p> <p>NOTE: THE TOTAL STATE FEE FOR TEMPORARY MODIFICATION IS \$300.00</p> <p>(c) Will the proposed change result in the licensed premises now being located within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?</p> <p>(If yes, explain in detail and describe any exemptions that apply) Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(d) Is the proposed change in compliance with local building and zoning laws? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(e) If this modification is for an additional Hotel and Restaurant Optional Premises or Resort Complex Related Facility, has the local authority authorized by resolution or ordinance the issuance of optional premises? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(f) Attach a diagram of the current licensed premises and a diagram of the proposed changes for the licensed premises.</p> <p>(g) Attach any existing lease that is revised due to the modification.</p>	
OATH OF APPLICANT		
I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge.		
Signature <i>Denise Beary</i>	Title <i>Owner</i>	Date <i>Oct 2, 2011</i>
REPORT AND APPROVAL OF LOCAL LICENSING AUTHORITY (CITY / COUNTY)		
The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the applicable provisions of Title 12, Articles 46 and 47, C.R.S., as amended. THEREFORE, THIS APPLICATION IS APPROVED.		
Local Licensing Authority (City or County) <i>Town of Avon</i>	Date filed with Local Authority <i>10/11/11</i>	
Signature	Title	Date
REPORT OF STATE LICENSING AUTHORITY		
The foregoing has been examined and complies with the filing requirements of Title 12, Article 47, C.R.S., as amended.		
Signature	Title	Date

Memo

To: Avon Local Liquor Licensing Authority
Thru: Larry Brooks, Town Manager
cc: Eric Heil, Town Attorney
From: Debbie Hoppe, Deputy Town Clerk
Patty McKenny, Assistant Town Manager Management Services 
Date: October 18, 2011
Re: **PUBLIC HEARING** for new Hotel and Restaurant Liquor License for Northside Coffee & Kitchen

Summary:

Town Council acting as the Local Liquor Licensing Authority is asked to consider the liquor license application for the following new license:

Applicant: Northside Coffee & Kitchen LLC d/b/a Northside Coffee & Kitchen
Address: 20 Nottingham Road, Units A & C
Manager: James Pavelich
Type of License: Hotel and Restaurant License

A Public Hearing is required for this agenda item.

Background on the Role of Liquor Licensing Authority in Consideration of New Licenses:

The Avon Town Council acting as the Local Liquor Licensing Authority has the duty to conduct hearings and make findings of fact as to whether to grant or deny a new local liquor license. The State Licensing Authority cannot grant or issue any "new license" until the Authority has first approved the application by conducting a hearing for such license. If the Authority denies the application, the Executive Director of the State of Colorado cannot override its decision. If the Authority approves a license, the State Licensing Authority cannot refuse to issue the license except upon hearing with a 15-day notice to the applicant and the Authority. Once the state license is received by the Town Clerk's Office and the Certificate of Occupancy has been received from the Building Department, the Town and State licenses can be issued.

The Town Clerk, Town Attorney and Police Department handle the review of the liquor license applications administratively. A "Report of Findings" is completed by the Town Clerk & provided the applicants five days prior to the hearing. The Authority members are provided the application materials when it appears on the Liquor Board Agenda. A public hearing is conducted for all new applications. The Local Authority's decision is usually given at the conclusion of the hearing although it may be delayed. The decision must be given in writing within 30 days after the date of the hearing and may follow in the form of a resolution. The motion to approve or disapprove should be explicit stating the exact reasons for denial or approval. A motion to deny a license must be based on evidence presented at the hearing.

The Liquor Code of Colorado provides that in making any decision, the Local Licensing Authority must consider the following before approving or denying the application:

- Facts and evidence resulting from the investigation and any facts brought to the attention of the Authority.
- The reasonable requirements of the neighborhood
- The desires of the inhabitants of the neighborhood.
- The number, type and availability of liquor outlets located in or near the neighborhood under consideration.

- Any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

Requests for licenses may be denied for various reasons such as the applicant is not of good moral character, the applicant's character, record, or reputation is unsatisfactory, or the proposed outlet is within 500 feet of any school.

Background on Applications:

Attached is the "Report of Findings" for this application which was hand delivered to Northside Coffee & Kitchen LLC on October 19, 2011. The Town Clerk and Town Attorney have reviewed the application for complete information and notice was posted on the premise and published in the Vail Daily as documented in the report of findings. The Avon Police Department has conducted the background investigations on the principal and a report is attached.

Discussion:

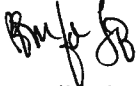
The information in the report addresses how the applicant has met the criteria outlined in Section 5.08 Liquor Licenses of the Avon Municipal Code and the State Liquor and Beer Code. The report indicates that the applicant has the burden of proving he/she is qualified to hold the license. The applicant also has the burden of proving that the reasonable requirements of the neighborhood and the desires of the community require the granting of the license. A petition survey has been submitted; this information will assist in the determination of the "desires & needs of the neighborhood".

The applicant has submitted a diagram of the premises. The applicant, James Pavelich, will attend the meeting. If the Authority decides to approve the application, a resolution is attached, which if adopted takes this action.

Financial Implications:

The application fees have been submitted for both the Town liquor license fees and for the State liquor license fees. A concurrent review of the application by the State of Colorado has been requested; those fees have been paid as well. There are also renewal fees the party pays at the time the license is renewed on an annual basis. Sales tax revenue will be also be submitted by the establishment.

Town Manager Comments:



Exhibits for the Application are as follows:

1. Report of Findings
2. Resolution
3. Colorado Liquor License Application
4. Diagram of Premises
5. Lease Agreement
6. Individual History Record & Report from Avon Police Department
7. Secretary of State Certificate and Articles of Organization
8. Operating Agreement
9. Petition



**LOCAL LIQUOR LICENSING AUTHORITY
TOWN OF AVON, COLORADO**

RE THE APPLICATION OF)
NORTHSIDE COFFEE & KITCHEN, LLC) REPORT OF FINDINGS
20 NOTTINGHAM ROAD, UNITS A &C)
AVON, COLORADO)
FOR A HOTEL AND RESTAURANT LICENSE)

TO: THE APPLICANT ABOVE AND OTHER INTERESTED PARTIES
SUBMITTED BY: DEBBIE HOPPE, DEPUTY TOWN CLERK, TOWN OF AVON
DATE: OCTOBER 06, 2011

PURSUANT to the Statutes of the State of Colorado, the Ordinances of the Town of Avon, and the Rules and Procedures of the Local Licensing Authority, you are hereby advised that with regard to the application for a Hotel and Restaurant License filed with the Town Clerk on September 18, 2011, an investigation has been made, and the Report of Findings is as follows:

1. The location of the new establishment, Northside Coffee & Kitchen is 20 Nottingham Road, Avon, Colorado.
2. From evidence submitted, the applicant is entitled to possession of the premises as documented by a lease dated September 1, 2011 and executed between Millsmore, LLC and Northside Coffee & Kitchen, LLC. The applicant has submitted a diagram of the premises which includes both upstairs & downstairs areas.
3. The sale of liquor in the proposed location is in an area permitted under the applicable zoning laws of the Town of Avon. If approved, it should be noted that the applicant must obtain a retail sales tax license from the Town of Avon. The Avon Business License will be issued only upon confirmation from Avon's Community Development Department that a final Certificate of Occupancy has been issued; the date of issuance is estimated to be mid-November. According to the applicant, Northside Coffee & Kitchen has a target opening date of December 2011.
4. The proposed building in which the liquor is to be sold is not located within 500' of any public or parochial school or the principal campus of any college, university or seminary.
5. The appropriate documents, i.e. individual history records & fingerprints, required to conduct the background investigation have been submitted to the Colorado Bureau of Investigation ("CBI") and Avon Police Department. The results of the CBI report on the principal indicates no concerns. The results of the criminal background investigation from the Avon Police Department showed no criminal history on owner / manager James Pavelich.

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Telephone</u>
Managing Member	James Pavelich	PO Box 99 Vail CO	970-331-3098



**LOCAL LIQUOR LICENSING AUTHORITY
TOWN OF AVON, COLORADO**

6. The applicant has submitted the appropriate application fees to the Town Clerk for costs associated with a new application. If the Hotel and Restaurant License is approved by Avon's Local Liquor Authority, the appropriate executed paperwork will be forwarded to the Liquor Enforcement Division for its approval and issuance of the State license. The Town Clerk will only issue both liquor licenses upon notification from Community Development that the applicant has been issued a final Certificate of Occupancy.
7. The public hearing on this application will be held on October 25, 2011 at 5:00 P.M. in the Council Chambers of the Avon Town Hall, Avon, Colorado. Public Notice was given regarding said application and scheduled hearing date was published in the Vail Daily on October 14, 2011 and posted on premises of the proposed location on October 6, 2011. At said hearing, the applicant shall have an opportunity to be heard regarding all matters related to the application, including all matters set forth herein.
9. The "Neighborhood" has been established by the Avon Liquor Licensing Authority with the adoption of Resolution No. 04-04 on November 23, 2004, defining it as "the neighborhood to be served by any applicant for liquor license of any kind shall be the Town of Avon, including residents of the Town, persons working in the Town and visitors to the Town".
10. At the public hearing, the applicant has the burden of proving he/she is qualified to hold the license applied for, and that his character, record and reputation are satisfactory. The applicant also has the burden of proving that the reasonable requirements of the neighborhood and the desires of the inhabitants of the neighborhood require the granting of the license. And finally, the applicant is required to file with the Town Clerk documentary evidence, thereof, including any surveys and petitions, no later than seven days before the date of the hearing; these petitions are included as a part of these findings.
11. The applicant is advised to obtain and read a copy of the State of Colorado Liquor and Beer Codes and Regulations and the Town Code Section on Liquor Licenses (Title 5, Chapter 5.08). These regulations can be found on the following websites:

http://www.revenue.state.co.us/liquor_dir/home.asp

http://www.colocode.com/avon/avon_05.pdf

Hand Delivered on October 19, 2011

EXHIBIT 2

PROCEEDINGS OF THE LIQUOR LICENSING AUTHORITY OF THE TOWN OF AVON, COUNTY OF EAGLE AND STATE OF COLORADO

RESOLUTION NO. 11-03 SERIES OF 2011

A Resolution Approving the Application of Northside Coffee & Kitchen LLC d/b/a Northside Coffee & Kitchen for a Hotel and Restaurant Liquor License

WHEREAS, on the 18th day of September 2011, the Liquor Licensing Authority of the Town of Avon ("the Authority") did receive and consider the application of Northside Coffee & Kitchen LLC d/b/a Northside Coffee & Kitchen whose mailing address is PO Box 99, Vail, CO 81658, for a hotel and restaurant liquor license at 20 Nottingham Road, Units A & C, Avon, Colorado; and

WHEREAS, the Authority finds that Notice of Application was published in the Vail Daily on October 14, 2011 and proof of publication by the publisher of the Vail Daily was received and made a part of the record; and

WHEREAS, the Authority finds that the application was in proper form and accompanied by the necessary supplementary evidentiary matter required by law, the regulations of the State of Colorado and the Authority; and

WHEREAS, the application was supported by petitions with signatures that supported the application in full with 100% in favor; and

WHEREAS, the neighborhood to be served by the proposed licensee has heretofore been determined to be the Town of Avon, including residents of the Town, persons working in the Town and visitors to the Town;

**NOW, THEREFORE, THE LIQUOR LICENSING AUTHORITY OF THE TOWN OF
AVON DOES FIND:**

1. The applicant is of good moral character and reputation.
2. The neighborhood to be served by the applicant is the Town of Avon, including residents of the Town, persons working in the Town and visitors to the Town.
3. There does exist a reasonable requirement in such neighborhood for the type of license for which application is made.
4. The adult inhabitants of the Town desire that the license be granted.

ADOPTED THE 25th DAY OF October 2011.

TOWN OF AVON, COLORADO

Rich Carroll, Chairman

Patty McKenny, Secretary

Memo

To: Avon Local Liquor Licensing Authority
From: Patty McKenny, Assistant Town Manager Management Services 
cc: Larry Brooks, Town Manager
Eric Heil, Town Attorney
Date: October 17, 2011
Re: Liquor Board Agenda: Violation & Resolution No 11-02, Series of 2011 on Show Cause Hearing for Westin Riverfront Resort & Spa

Summary:

Please find attached an Avon Police Department Incident / Investigation Reports as follows:

Case No. 2011-000740

Offender: Dustin Salas, Employee of Avondale Restaurant at Westin Riverfront Resort & Spa

Charge: Sale of Alcohol to Minor (Statute 9.12.070) and Sale to Intoxicated Person (Statute 9.12.040)

Arrest Report # 11-000740 on 8/26/11

Complaint and Summons Citation No. 23459; Court date set for October 5, 2011

This police report informs the Local Liquor Licensing Authority about a violation that occurred on August 26, 2011 at the Westin Riverfront Resort & Spa's Avondale Restaurant. Please note that the employee Dustin Salas was issued a "Complaint and Summons" to Avon Municipal Court on October 5, 2011 for "Sale to Underage Minor during a "compliance check" conducted by Eagle County Law Enforcement Agencies. These checks are conducted as a result of funding from the "Drug Free Communities Grant".

Background:

The Colorado Liquor Code provides for rules related to license suspension, revocation and fines. Some highlights from the Colorado Municipal League's "Liquor & Beer Licensing Practice" Publication are helpful in understanding the role of the Liquor Authority. Some excerpts follow as well as Chapter 3 as an attachment for your review.

If a licensee or an agent, servant, or employee of a licensee, violated any of the provisions of the Colorado Liquor Code, any rules or regulations authorized pursuant to the Liquor Code, or any terms, conditions or provisions of the license issued by the local authority, the local licensing authority may suspend or revoke the license. The local authority may act on its own motion or a complaint. Before suspending or revoking a license, the local authority must investigate and hold a public hearing at which the licensee is afforded an opportunity to be heard.

If there is probable cause to believe that a violation has occurred, the local authority must issue and cause to be served on the licensee a notice of hearing and order to show cause why the license should not be suspended or revoked.

Discussion:

Based on the police information presented, the Avon Liquor Authority will evaluate whether or not there is probable cause to believe that a violation occurred at this establishment. The Authority can choose to hold a hearing at which time it must decide whether or not a violation occurred and why the license should not be suspended or revoked.

Please find attached a copy of the Resolution and the Notice of Hearing and Order to Show Cause" that proposes November 22, 2011 as a show cause hearing date. This allows for a window of 30 days for the defendant to finalize the Avon Municipal Court appearance and provides the Town Attorney opportunity to draft a "Stipulation of Findings of Fact, Admission of Violation and Order for Sanctions" that could be

presented to the Liquor Authority at the November meeting. The "Authority" will consider Resolution No. 11-02 as action as to setting the hearing, as follows:

- A Resolution Finding Probable Cause To Believe That East West Resorts LLC & Riverfront Village Restaurant LLC d/b/a Westin Riverfront Resort & Spa Has Violated A Law, Rule Or Regulation With Respect To The Operation Of Its Licensed Premises; Setting A Hearing With Respect Thereto; And Directing The Issuance And Service Of A Notice Of Hearing And Order To Show Cause As To Why The Hotel and Restaurant Liquor License Of Such Licensee Should Not Be Suspended Or Revoked.

The manager of the Westin Riverfront Resort & Spa has been informed that this violation is before the Liquor Authority and that consideration will take place on October 25, 2011, Bob Trotter will attend this meeting.

Exhibits:

1. Avon Incident / Investigation Reports
2. Resolution No. 11-02
3. Notice of Hearing; and Order to Show Cause Notice
4. CML Liquor & Beer Licensing and Practice / Chapter 3: License Suspension, Revocation, and Fines

EXHIBIT 2

**PROCEEDINGS OF THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO
ACTING AS THE LOCAL LICENSING AUTHORITY
COUNTY OF EAGLE AND STATE OF COLORADO**

**RESOLUTION NO. 11-02
SERIES OF 2011**

**IN THE MATTER OF THE HOTEL AND RESTAURANT LIQUOR LICENSE
EAST WEST RESORTS LLC & RIVERFRONT VILLAGE RESTAURANT, LLC D/B/A WESTIN RIVERFRONT RESORT
& SPA FOR THE LICENSED PREMISES LOCATED AT 126 RIVERFRONT LANE., AVON, COLORADO**

A Resolution Finding Probable Cause To Believe That East West Resorts LLC & Riverfront Village Restaurant, LLC d/b/a Westin Riverfront Resort & Spa Has Violated A Law, Rule Or Regulation With Respect To The Operation Of Its Licensed Premises; Setting A Hearing With Respect Thereto; And Directing The Issuance And Service Of A Notice Of Hearing And Order To Show Cause As To Why The Hotel and Restaurant Liquor License Of Such Licensee Should Not Be Suspended Or Revoked

WHEREAS, the Town Council of the Town of Avon, acting as the local licensing authority ("Liquor Licensing Authority"), has received a complaint from the Avon Police Department alleging that on August 26, 2011 Westin Riverfront Resort & Spa ("Licensee") violated the following laws:

- ✓ Avon Municipal Code 9.12.070, sale of alcohol to minors
- ✓ CRS 12-47-901(5)(c), sale of fermented malt beverage to a person under the age of 21 years

WHEREAS, the Liquor Licensing Authority, acting pursuant to §12-47-601, C.R.S., and Regulation 47-600(A) of the Liquor Regulations, has determined by investigation or otherwise that there is probable cause to believe that the Licensee has violated such laws, rules or regulations as alleged in the complaint as set forth above.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO, ACTING AS THE LOCAL LIQUOR LICENSING AUTHORITY, AS FOLLOWS:

Section 1. A hearing shall be held before the Town of Avon Town Council, acting as the local licensing authority, on _____ commencing at 5 PM or as soon thereafter as the matter may be heard, to consider the complaint against the Licensee as described above. Such hearing shall be held in the Town Council Chambers of the Avon Town Hall, One Lake Street, Avon, Colorado. At such hearing the Licensee shall appear and show cause, if any it may have, why its Hotel and Restaurant Liquor License for the licensed premises described as 126 Riverfront Lane., Avon, Colorado should not be suspended or revoked by the Liquor Licensing Authority for one or more violations of the laws, rules or regulations which govern the operation of the licensed premises, all as more described in the complaint set forth above.

Section 2. The Town Clerk shall issue and cause to be served upon the Licensee a Notice of Hearing and Order to Show Cause as required by Regulation 47-600(B) of the Liquor Regulations. A certified copy of this Resolution shall also be served upon the Licensee along with Notice of Hearing and Order to Show Cause.

Section 3. The hearing set by this Resolution shall be conducted in accordance with the provisions of §12-47-601, C.R.S., Regulation 47-600(B) of the Liquor Regulations and other applicable law.

Section 4. This Resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 25TH DAY OF OCTOBER 2011.

TOWN OF AVON LIQUOR LICENSING
AUTHORITY

By _____
Rich Carroll, Chairman

ATTEST:

Patty McKenny
Town Clerk

APPROVED IN FORM

Town Attorney

EXHIBIT 3

**PROCEEDINGS OF THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO,
ACTING AS THE LOCAL LICENSING AUTHORITY,
COUNTY OF EAGLE AND STATE OF COLORADO**

IN THE MATTER OF THE HOTEL AND RESTAURANT)
LIQUOR LICENSE OF EAST WEST RESORTS, LLC &) **NOTICE OF HEARING; AND**
RIVERFRONT VILLAGE RESTAURANT, LLC D/B/A) **ORDER TO SHOW CAUSE**
WESTIN RIVERFRONT RESORT & SPA FOR THE)
LICENSED PREMISES LOCATED AT 126)
RIVERFRONT LANE., AVON, COLORADO)

**TO: EAST WEST RESORTS LLC & RIVERFRONT VILLAGE RESTAURANT LLC D/B A WESTIN
RIVERFRONT RESORT & SPA
LOCAL ADDRESS: 126 RIVERFRONT LANE, AVON, CO 81620
MAILING ADDRESS: PO BOX 9690, AVON, CO 81620**

WHEREAS, on August 26, 2011, the Town of Avon Liquor Licensing Authority determined that there is probable cause to believe that the Licensee named above has violated the following laws:

- ✓ Avon Municipal Code 9.12.070, sale of alcohol to minors
- ✓ CRS 12-47-901(5)(c), sale of fermented malt beverage to a person under the age of 21 years

NOW, THEREFORE, You, East West Resorts, LLC & Riverfront Village Restaurant, LLC d/b/a Westin Riverfront Resort & Spa, the Licensee, are hereby ordered to appear before the Town of Avon Liquor Licensing Authority on _____ at 5 PM, at the Avon Town Hall, One Lake Street, Avon, Colorado 81620, to show cause, if any you have, why your Hotel and Restaurant Liquor License for the above described licensed premises should not be suspended or revoked for having violated CRS 12-47-901(h)(l) more specifically alleged below. Your failure to appear may result in the suspension or revocation of your liquor license without further notice.

YOU ARE FURTHER NOTIFIED that the purpose of the show cause hearing is to determine whether you have violated the rules, regulations and laws which govern your operation of the Licensed Premises, as follows:

It is alleged by the Notice of Liquor Violation from the Avon Police Department that on August 26, 2011, the Licensee or Licensee's employees or agents permitted activity to occur on or about the Licensed Premises in violation of

- ✓ Avon Municipal Code 9.12.070, sale of alcohol to minors
- ✓ CRS 12-47-901(5)(c), sale of fermented malt beverage to a person under the age of 21 years

The hearing in this matter shall be conducted pursuant to Section 12-47-601, C.R.S., and Regulation 47-600 promulgated by the Colorado Department of Revenue, Liquor Enforcement Division. You may be represented by an attorney if you so desire.

A copy of the Resolution of the Liquor Licensing Authority finding probable cause to believe that you have committed a violation of the above described regulation of the Colorado Department of Revenue, Liquor Enforcement Division, is served with this Order.

GIVEN BY ORDER OF THE TOWN OF AVON LIQUOR LICENSING AUTHORITY.

Dated: _____

**TOWN OF AVON LIQUOR LICENSING
AUTHORITY**

Patty McKenny, Town Clerk

Chapter 3:

License Suspension, Revocation, and Fines

Suspensions and revocations

Suspension and revocation procedure

The local licensing authority may suspend or revoke a liquor license whenever a licensee (or the agent, servant, or employee of a licensee) violates any provision of the Liquor Code, violates any rule or regulation authorized pursuant to the Liquor Code, or violates any term, condition, or provision of the license issued by the local authority.¹ When doing so, the local authority may act on its own motion or a complaint.² Before suspending or revoking a license, however, the local authority must investigate and hold a public hearing at which the licensee is afforded an opportunity to be heard (see below).³ Any license may be summarily suspended by the issuing licensing authority *without notice*, pending a prosecution, investigation or public hearing, "for a temporary period of not more than fifteen days."⁴

Whenever a written complaint is filed with a local authority charging a licensee with violation of any law, rule, or regulation adopted by the state licensing authority, the local authority must determine by investigation or otherwise the probable truth of the charges.⁵ If there is probable cause to believe that the violation has occurred, the local authority must issue and cause notice to be served by written mailing to the licensee at the address contained in the license.⁶ The service must contain a notice of hearing and an order to show cause why the license should not be suspended or revoked.⁷ Finally, the notice must describe the charges with such "reasonable certainty" that the defending licensee will be able to prepare a defense.⁸

For the hearing, the local authority may administer oaths and issue subpoenas to require the presence of persons and the production of necessary papers, books, and records.⁹ The licensing authority may also obtain warrants for search and/or seizure of any licensed premise or property, or a suspected illegal alcoholic beverage operation, upon sufficient evidence provided to any county or district court judge.¹⁰ The statutes authorize, under such a warrant, the seizure of any property related to the illegal operation, including, but not limited to, alcoholic beverages, any containers used for alcohol, furniture, automobiles and other means of transport for the illegal beverages, and other related implements.¹¹

The local authority must hold the hearing at a place and time designated in the notice, or on such other day as may be set for good cause shown.¹² At the hearing, evidence supporting the charges must be given first, and then the liquor licensee or his counsel may cross-examine

¹ § 12-47-601(1).

² *Id.*

³ *Id.*

⁴ § 12-47-601(2) (emphasis added). "Where a licensing authority has reasonable grounds to believe and finds that a licensee has been guilty of a deliberate and willful violation of any applicable law or regulation or that the public health, safety or welfare imperatively requires emergency action and incorporates such findings in its order, it may be temporarily or summarily suspend [sic.] the license pending proceedings for suspension or revocation which shall be promptly instituted and determined." Liquor Reg. § 47-602(A).

⁵ Liquor Reg. § 47-600(A).

⁶ § 12-47-601(2)

⁷ Liquor Reg. § 47-600(B).

⁸ *Chroma Corp. v. County of Adams*, 36 Colo. App. 345, 349, 543 P.2d 83, 86 (1975).

⁹ § 12-47-601(1).

¹⁰ §§ 12-47-904-12-47-907.

¹¹ § 12-47-906; *but see Walker v. City of Denver*, 720 P.2d 619 (Colo. App. 1986) (holding that any search made under this provision must be limited in duration to the time necessary to accomplish the state action, that the seizure of property may only occur after a licensee's conviction on some alcohol-related violation, that such seizure must not be undertaken in such a way as to permanently damage property, and that if such damage is unavoidable then the objects must not be seized).

¹² Liquor Reg. § 47-600(C).

the witnesses presenting such evidence.¹³ The licensee, in person or by counsel, may then offer evidence and statements in his defense, and by way of explanation and mitigation of the charges.¹⁴ If the licensee is found to have committed the violation charged, or any other violation, evidence and statements in aggravation of the offense must also be permitted.¹⁵

If the evidence presented at the hearing does not support the charges stated in the notice and order served upon the licensee but establishes the guilt of the licensee of a violation of *some other law, rule, or regulation*, the licensee may, again, give evidence and statements in his defense and by way of explanation and mitigation of the charges if prepared to do so at that time.¹⁶ If the evidence required for his defense is not available at that time but can be obtained by the licensee, the licensee must state the substance of the evidence, and upon his or her request the hearing may be recessed for not more than 10 days.¹⁷ The hearing must then continue under the same procedure as though no recess had occurred.¹⁸

If, at the end of the hearing, the local authority decides no violation occurred, it must dismiss the charges.¹⁹ If, however, the local authority *does* find that a violation has occurred, it may suspend or revoke the license.²⁰ A "violation" upon which the local authority may base a suspension, revocation, or any other statutory liability may be either (1) a conviction for a violation of some law, rule or procedure, or (2) a conviction based upon the entry of a plea of *nolo contendere* to a charge of violation of the code.²¹

Sales to minors and false I.D.'s

In Colorado, the sale of alcohol to an underage person *cannot* constitute grounds for the revocation or suspension of a license issued under the Liquor Code if the underage person exhibited a fraudulent proof of age.²² However, the licensee, the licensee's employee, or any peace or police officer may detain and question the person presenting the proof of age that he or she believes to be fraudulent so long as he or she has reasonable grounds for doing so, and may not thereby be held civilly or criminally liable for false imprisonment, unlawful detention, slander, malicious prosecution, or false arrest.²³ By law, the licensee or licensee's employee, if possible, must confiscate the proof of age if having reasonable cause to believe it to be fraudulent and turn it over to a local law enforcement agency within 72 hours.²⁴ However, a failure to confiscate or turn the proof of age over to a local law enforcement agency does not constitute a criminal offense.²⁵

Finally, all licensees must display a printed card at least fourteen inches by 11 inches with letters at least one-half inch in height, giving notice of the age restriction (as well as other restrictions) and the licensee's right to confiscate a fraudulent I.D. and his duty to turn it over to the state or local authorities.²⁶

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Liquor Reg. § 47-600(C).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Liquor Reg. § 47-600(E).

²⁰ *Id.*

²¹ *Id.* See also *People v. Goodwin*, 197 Colo. 47, 49-50, 593 P.2d 326, 328 (1976) (expressly disapproving language to the contrary in *Bruce v. Leo*, 129 Colo. 129, 267 P.2d 1014 (1954)).

²² § 12-47-901(5) (a) (1). The statute begs the question of whether any purported "proof of age," no matter how patently fraudulent or far-fetched, may serve to insulate the licensee from any responsibility for serving an underage person. Some guidance as to what may or may not be deemed adequate "proof of age" may be provided by Liquor Reg. § 47-912, which lists the acceptable forms of I.D.'s for the purposes of the Liquor Code, and which explains that

[i]t shall be an affirmative defense to any administrative action brought against a licensee for alleged sale to a minor if the minor presented fraudulent identification of the type established above and the licensee possessed an identification book issued within the past three years which contained a sample of the kind of identification presented for compliance purposes.

Liquor Reg. § 47-912. The regulation also provides that the burden of proof is on the licensee to establish by a preponderance of the evidence that the minor presented fraudulent identification. *Id.*

²³ § 12-47-901(5) (a) (II) (B).

²⁴ § 12-47-901(5) (a) (II) (A).

²⁵ *Id.*

²⁶ See § 12-47-901(5) (h) (providing the required wording for this card).

Sales to minors as part of a compliance check

The state and many local licensing authorities conduct underage compliance checks of licensees in which a minor under the supervision and direction of law enforcement attempts to purchase alcohol. If the minor is allowed to purchase the alcohol, the local licensing authority may consider a suspension or revocation of the license as with any other sale to minor violation.

In response to industry complaints that local licensing authorities determining penalties for licensee selling to minors in underage compliance checks were applying different penalties for the same violations, the 1998 General Assembly authorized the Division of Liquor Enforcement to promulgate regulations addressing the "range of penalties... which shall include aggravating and mitigating factors to be considered when persons under 21 years of age are utilized to investigate sales of alcohol beverages by liquor licensees to underage persons."²⁷

A set of model guidelines for underage compliance checks was developed with agreement from government and industry participants, but the state licensing authority did not require their application at the local level.²⁸ Most municipalities have adopted the model guidelines or follow their recommended ranges. The guidelines outline recommended penalties based on the amount of previous infractions, list several mitigating factors that licensing authorities are encouraged to consider, and detail the recommended methodology for conducting a fair compliance check.²⁹

Finally, the General Assembly passed the "Responsible Alcohol Beverage Vendor Act" in 2004. A "responsible alcohol beverage vendor" is defined as a vendor that complies with the server and seller training program established by the director of the liquor enforcement division of the department of revenue.³⁰ When penalizing a licensee whose employees have served a minor during an underage compliance check, the act requires licensing authorities to consider the responsible vendor training as a mitigating factor.³¹

Other grounds for suspension and revocation

Other statutory provisions setting forth violations which may result in suspensions or revocations have withstood legal challenges. The prohibition against serving "visibly intoxicated persons"³² was found not unconstitutionally vague by the Colorado Court of Appeals.³³ The Court further found that as long as the liquor authority provides to the licensee the names of the persons involved, the dates of the alleged violations, and the specific acts which constitute the alleged violations, the licensee will have been provided sufficient notice of the violations.³⁴ An allegation that the drinks contained alcohol was sufficient; the type, i.e. rum, vodka, gin, did not have to be proven to make a finding against the licensee.³⁵ Additionally, the Colorado Supreme Court has held constitutional and not void for vagueness the prohibition on allowing or permitting staff and employees to solicit alcoholic drinks or "any other thing of value" from patrons.³⁶

Finally, the local authority may, in its discretion, revoke a license if it determines that the licensed location has been inactive without good cause for at least one year, or in the case of a retail license approved for a facility not yet constructed, a license may be revoked when (1) the facility has not been constructed and placed in operation within two years of approval of the license application, or (2) construction of the facility has not commenced within one year of approval.³⁷

A complete recitation of all the various grounds for suspension, revocation, or other disciplinary action against the licensee is beyond the scope of this publication. However, local

²⁷ § 12-47-202(2) (a) (I) (E).

²⁸ The model guidelines are available from the Division of Liquor Enforcement

²⁹ Liquor Reg. § 47-604.

³⁰ § 12-47-1002

³¹ § 12-47-601 (9)

³² § 12-47-901(1) (a); Liquor Reg. § 47-900(A).

³³ *Costiphx Enters. v. City of Lakewood*, 728 P.2d 358, 362 (Colo. App. 1986).

³⁴ *Id.* at 361.

³⁵ *Id.*

³⁶ § 12-47-901(5) (I); Liquor Reg. § 47-920; *People v. Becker*, 759 P.2d 26, 31 (Colo. 1988). The court also specifically found that "any other thing of value" could include non-alcoholic drinks.

³⁷ § 12-47-306.

licensing authorities would be well advised to familiarize themselves with some of the more important laws and regulations that govern the operation of liquor establishments, including the statute cataloguing all "unlawful acts" generally,³⁸ the statute prohibiting financial assistance to licensees,³⁹ regulations proscribing the "conduct of [the] establishment,"⁴⁰ sanitary regulations for licensed premises,⁴¹ and regulatory restrictions on gambling in licensed premises.⁴²

What happens after a license is suspended?

If the local authority suspends a license, it may order the holder of the suspended license to post two notices in conspicuous places, one on the exterior and one on the interior of the premises for the duration of the suspension.⁴³ If so ordered, the posted notices must measure two feet in length, fourteen inches in width, and read as follows:

NOTICE OF SUSPENSION
ALCOHOLIC BEVERAGES LICENSES ISSUED
FOR THESE PREMISES HAVE BEEN
SUSPENDED BY ORDER OF THE
LOCAL LICENSING AUTHORITY
FOR VIOLATION OF THE
COLORADO LIQUOR/BEER CODE⁴⁴

As stated above, the issuing licensing authority can suspend a license temporarily, without notice, for up to fifteen days pending any prosecution, investigation, or public hearing.⁴⁵ With notice, the suspension may last up to six months.⁴⁶ No part of the licensing fees already paid may be returned to the licensee upon suspension or revocation of the license.⁴⁷

The Colorado Supreme Court, in reviewing a licensing authority's revocation of a license, has held that where the record of the hearing discloses ample evidence of violations of law, there exist no grounds for reversal of the decision to revoke a liquor license.⁴⁸ Thus, as with application hearings, the local authority should record the revocation hearing to ensure adequate judicial review of the authority's decision and enhance the likelihood of a court' upholding the authority's decision.

The Supreme Court also has held that a liquor license "is a type of property right, but it is still a relatively restricted one, and it is subject to those regulations under which it was issued."⁴⁹ Consequently, this property right requires due process of law before it may be taken away, and a local authority contemplating suspension or revocation of a license should proceed only with the advice of the municipal attorney.

Finally, in *Two G's, Inc. v. Kalbin*, the Supreme Court held that a license suspension proceeding is not reviewable under either the Administrative Procedure Act⁵⁰ or the Liquor Code's judicial review provisions⁵¹ if the violation(s) are purely a violation(s) of a municipal ordinance.⁵² In such a case, review will only be available under C.R.C.P. 106(a) (4) or C.R.C.P. 57. By contrast, when an act violates a provision of the state Liquor or Beer Code itself, the

³⁸ § 12-47-901.

³⁹ § 12-47-308.

⁴⁰ Liquor Reg. § 47-900.

⁴¹ Liquor Reg. § 47-902.

⁴² Liquor Reg. § 47-922.

⁴³ Liquor Reg. § 47-600(F).

⁴⁴ *Id.*

⁴⁵ § 12-47-601(2).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Popiel v. Schooley*, 147 Colo. 76, 77, 362 P.2d 863, 864 (1961).

⁴⁹ *New Safari Lounge v. Colorado Springs*, 193 Colo. 428, 432-33, 567 P.2d 372, 375 (1977); see also *Costiphx Enters.*, 728 P.2d at 361-62; *Fueston v. City of Colorado Springs*, 713 P.2d 1323, 1326 (Colo. App. 1985).

⁵⁰ §§ 24-4-101-24-4-108.

⁵¹ § 12-47-802.

⁵² *Two G's, Inc. v. Kaliban*, 666 P.2d 129, 132 (Colo. 1983).

Code's provisions for judicial review will *supersede* the provisions of the Administrative Procedure Act.⁵³

Optional fines

Whenever the local liquor licensing authority decides to impose a suspension of fourteen days or less, the retail license holder may petition the authority to impose a fine in lieu of the suspension for all or part of the suspension period.⁵⁴ However, this petition and its granting may only occur if the local governing body has previously adopted a resolution or ordinance to allow for this alternative.⁵⁵ To qualify for a fine in lieu of a suspension, a review of the licensee's financial records must enable a reasonably accurate determination of their anticipated loss.⁵⁶ Also, the licensee must not have had its license suspended or revoked, or paid a fine in lieu of such actions, within the prior two years,⁵⁷ and the licensing authority must be able to determine that allowing a fine to be paid will not endanger the public and that it will constitute an adequate punishment.⁵⁸ If the local authority is satisfied that the statutory conditions for accepting the petition are met and agrees to grant it, the fine imposed must be equivalent to twenty percent of the licensee's expected loss of gross income from sales of alcohol beverages during the time of the proposed suspension but not less than \$200 nor more than \$5,000.⁵⁹

Licensees must pay all fines in cash or by certified or cashier's check.⁶⁰ Once the local authority determines that a fine may be substituted for suspension, and the licensee pays the fine, the local authority may issue a permanent stay of the suspension order.⁶¹

The statutes authorize the licensing authority to issue temporary stays of the suspension order to make all investigations required for determining the legality of imposing a fine in lieu of the suspension action.⁶² The local authority must credit fines paid under this section to its general fund.⁶³

Summary suspensions

As mentioned above, the local authority may also temporarily suspend a license without notice pending prosecution, investigation, or public hearing.⁶⁴ Where a licensing authority reasonably believes that the licensee is guilty of a deliberate and willful violation of any applicable law or regulation, or that the preservation of the public health, safety, or welfare imperatively requires emergency action, and incorporates such findings in its order, the authority may temporarily or summarily suspend the license pending proceedings for suspension or revocation.⁶⁵ These proceedings must be promptly instituted and determined,⁶⁶ and the summary suspension may not exceed fifteen days.⁶⁷

The facial validity of the statute authorizing summary suspensions has been upheld by the Colorado Supreme Court in *New Safari Lounge v. Colorado Springs*.⁶⁸ In that case, the Court ruled that the statute provides sufficient standards to guide the licensing authority since it must be read in the context of its legislative purpose: the protection of the social welfare and health, peace, and morals of the people.⁶⁹ The Court also rejected the argument that

⁵³ *Id.*; *Chroma v. Campbell*, 619 P.2d 74, 76-77 (Colo. App. 1980).

⁵⁴ § 12-47-601(3) (a). Before such petition the authority's decision must have become final, either by failure of the licensee to appeal or exhaustion of all judicial review.

⁵⁵ § 12-47-601(7).

⁵⁶ § 12-47-601(3) (a) (II).

⁵⁷ § 12-47-601(3) (a) (III).

⁵⁸ § 12-47-601(3) (a) (I).

⁵⁹ § 12-47-601(3) (b).

⁶⁰ § 12-47-601(3) (C).

⁶¹ § 12-47-601(4).

⁶² § 12-47-601(5).

⁶³ § 12-47-601(4).

⁶⁴ § 12-47-601(2).

⁶⁵ Liquor Reg. § 47-602(A).

⁶⁶ *Id.*

⁶⁷ § 12-47-601(2); Liquor Reg. § 47-602(B).

⁶⁸ *New Safari Lounge*, 193 Colo. at 432-33, 567 P.2d at 375.

⁶⁹ *Id.* at 433-34, 376.

suspension without a prior hearing violates the due process clauses of the United States and Colorado constitutions.⁷⁰

In *New Safari Lounge* the licensing authority had suspended the license and scheduled a hearing on the alleged violations to be held nine days after the suspension.⁷¹ Significantly, the licensing authority found and included in its order that the alleged violations constituted an immediate hazard to the public health, safety, and welfare of the municipality.⁷² While the licensee protested the element of the notice which informed him that the hearing officer could change the date of the hearing at the licensee's request, the Court ruled that there was no violation of due process, despite the licensee's valid property right in his license:

Due process is required before *the final deprivation* of a property interest. In the instant case, however, the summary temporary suspension was not *a final deprivation* of the appellee's property interest but, rather, a holding action, pending an early scheduled hearing and final disposition. ... Accordingly, we hold that [the statute] is constitutional on its face when a hearing is provided *as soon as possible* within the fifteen-day limitation set out in the statute.⁷³

Because of the legal aspects of the licensee's limited property interest in his or her liquor license and the complications of due process rights afforded by the state and federal constitutions, a local authority contemplating a summary suspension should proceed only with advice of the municipal attorney.

⁷⁰ *Id.* at 434–35, 377.

⁷¹ *Id.* at 431, 374.

⁷² *Id.* at 433–34, 376.

⁷³ *Id.* at 434–45, 377 (emphases added, citations omitted).

**TOWN OF AVON, COLORADO
MINUTES OF THE LOCAL LIQUOR LICENSING AUTHORITY MEETING
HELD OCTOBER 11, 2011**

The Avon Town Council acting as the Local Liquor Licensing Authority for the Town of Avon, Colorado convened at 5:15 PM at the Avon Town Hall, One Lake Street, Avon, Colorado. A roll call was taken and Board members of the Authority present were Rich Carroll as Chairperson, and Board members Dave Dantas, Chris Evans, Kristi Ferraro, Todd Goulding, Amy Phillips and Buz Reynolds.

RENEWAL OF LIQUOR LICENSES

- a. Applicant: Pazzo's West, Inc. d/b/a Pazzo's Pizzeria
Address: 82 E. Beaver Creek Blvd.
Manager: Mark A. Colwell
Type: Hotel and Restaurant Liquor License

Chairman Carroll asked if the application materials were in order; it was noted that all materials were submitted. Board member Dantas moved to approve the renewal of the Hotel and Restaurant Liquor License for Pazzo's West, Inc. d/b/a Pazzo's Pizzeria; Board member Evans seconded the motion and it passed unanimously.

- b. Applicant: Vail Valley Mexican Foods, LLC d/b/a Agave
Address: 1060 W. Beaver Creek Blvd.
Manager: Richard Wheelock
Type: Hotel and Restaurant Liquor License

Chairman Carroll asked if the application materials were in order; Town Clerk Patty McKenny noted that all materials were submitted. Board member Ferraro moved to approve the renewal of Hotel and Restaurant Liquor License for Vail Valley Mexican Foods, LLC d/b/a Agave; Board member Reynolds seconded the motion and it passed unanimously.

CONSENT AGENDA:

Board member Evans moved to approve the consent agenda; Board member Ferraro seconded the motion and it passed unanimously by those voting (Phillips abstained).

- a. Minutes from September 27, 2011

There being no further business to come before the Board, the meeting adjourned at 5:25 PM.

RESPECTFULLY SUBMITTED:

Patty McKenny, Secretary

APPROVED:

Rich Carroll	_____
Dave Dantas	_____
Chris Evans	_____
Kristi Ferraro	_____
Todd Goulding	_____
Amy Phillips	_____
Albert "Buz" Reynolds	_____