



TOWN OF AVON, COLORADO
AVON LIQUOR BOARD MEETING FOR TUESDAY, JUNE 8, 2010
MEETING BEGINS AT 5:00 PM
AVON TOWN HALL, ONE LAKE STREET

PRESIDING OFFICIALS

CHAIRMAN RON WOLFE
VICE CHAIRMAN BRIAN SIPES
BOARD MEMBERS RICHARD CARROLL, DAVE DANTAS, KRISTI FERRARO
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. CALL TO ORDER / ROLL CALL**
- 2. INQUIRY OF THE PUBLIC FOR COMMENT AND APPROVAL OF AGENDA**
- 3. SHOW CAUSE HEARINGS ON ESTABLISHMENT VIOLATIONS**
 - a. Wal-Mart Stores, Inc d/b/a Wal-Mart Supercenter#1199 – *continued from May 25, 2010 meeting (Seth Murphy, Richmond, Sprouse, & Murphy, LLC Attorneys at Law)*
 1. Avon Police Incident Report Case No. 2010-000238
Address: 171 Yoder Avenue
Manager: Matthew Mower
Date Reported: April 9, 2010
- 4. PUBLIC HEARING ON SPECIAL EVENT PERMITS**
 - a. Applicant Name: Eagle Valley Humane Society
Event Name: Thunderbird Art & Wine Affaire
Event Location: Harry A. Nottingham Park
Event Dates: July 16, 17, 18, 2010; 10 AM until 5 PM
Event Manager: Char Quinn
- 5. RENEWAL OF LIQUOR LICENSES**
 - a. Applicant: Wal-Mart Stores, Inc d/b/a Wal-Mart Supercenter#1199
Address: 171 Yoder Avenue
Manager: Matthew Mower
Type: 3.2% Beer License (Off Premises)
 - b. Applicant: TCF 1 d/b/a Zacca Za
Address: 101 Fawcett Road #100
Manager: Paul Ferzacca
Type: Hotel and Restaurant Liquor License
- 6. CONSENT AGENDA**
 - a. Minutes from May 25, 2010
 - b. Resolution Addressing Saltwater Cowboy Violation & Penalties
- 7. ADJOURN AT 5:20 PM**

Memo

To: Avon Local Liquor Licensing Authority
From: Patty McKenny, Town Clerk
cc: Larry Brooks, Town Manager
Eric Heil, Town Attorney
Date: June 4, 2010
Re: Liquor Board Agenda – Proposed Stipulation for Wal-Mart Violations

Summary:

Please find attached the proposed "Stipulated Findings of Fact, Conclusions and Sanctions Orders" in the violation matter for Wal-Mart Stores, Inc. d/b/a Wal-Mart Supercenter #1199 (Licensee). This matter was continued to the June 8, 2010 meeting.

Background:

The Licensee has admitted to the violation as outlined in the attached documents, Section II: Findings and Conclusions. The Avon Liquor Authority recently approved the resolution showing cause on the matter and setting show cause hearing dates for the May 25, 2010 Liquor Licensing Meeting. This matter was considered by the Avon Liquor Licensing Authority at the last May 25, 2010 meeting and continued to the June 8, 2010 meeting.

Discussion:

Seth Murphy, Attorney representing the Avon Police Department has presented a proposed "Stipulated Findings of Fact, Conclusions and Sanctions Order" that has been agreed upon between the licensees, or representatives thereof, and is attached as follows:

Exhibit A: Wal-Mart Stores, Inc. d/b/a Wal-Mart Supercenter #1199

Because the store manager Mr. Mower was not in attendance at the meeting to answer questions, the matter was continued until the June 8, 2010 meeting. Staff has been informed that Mr. Mower will be at this meeting next Tuesday. It is noted that the Wal-Mart renewal license application is also the agenda. The Avon Liquor Licensing Authority will have the opportunity at the meeting to ask questions, revise and/or accept and approve the stipulation as drafted.

Town Manager Comments:

Attachments:

Exhibit A: Wal-Mart Stores, Inc. d/b/a Wal-Mart Supercenter #1199

Exhibit B: Letter from Seth Murphy to Wal-Mart Supercenter #1199 Representatives Jim Renfrow & Matt Mower

EXHIBIT A

TOWN OF AVON LIQUOR LICENSING AUTHORITY

STIPULATED FINDINGS OF FACT, CONCLUSIONS AND SANCTIONS ORDER

In Re the Matter of the 3.2% Beer License (Off-Premise) of:

**Wal-Mart Stores, Inc., d/b/a Wal-Mart Supercenter #1199 (the "Licensee")
Address: 171 Yoder Avenue, Avon, Colorado**

This matter comes before the Town of Avon Local Liquor Licensing Authority (the "Authority") upon the Authority's Notice of Hearing; and Order to Show Cause, dated April 27, 2010 (the "Show Cause Order"), a copy of which was mailed to the representative of record for the Licensee by certified mail, return receipt requested.

I. INTRODUCTION

Section 12-47-601, C.R.S and 1 C.C.R. 203-2, Regulation 47-600 empower the Authority to conduct a hearing whenever a written complaint is made charging a licensee or its agents, servants or employees of a violation of any laws or rules or regulations adopted by the State Licensing Authority. After investigation and public hearing, at which the licensee shall be afforded an opportunity to be heard, if a finding is made that a violation has occurred, the Authority is authorized to consider whether to suspend or revoke a liquor or beer license.

II. FINDINGS AND CONCLUSIONS

1. The Licensee operates that business generally known as the Wal-Mart Supercenter #1199 within the Town of Avon, Colorado and sells alcoholic beverages at such business pursuant to Town of Avon and State of Colorado liquor licenses.
2. Factual Basis: The Licensee admits a violation of § 12-47-901(5)(c), C.R.S., concerning the sale of fermented malt beverage to a person under the age of 21 years, and stipulates that the facts alleged in the Show Cause Order did occur as it pertains to the sale of alcohol to a person under the age of 21 years. The undersigned agree to the following factual basis for the Stipulation:

On April 9, 2010, Ibrahima Diallo, an employee of the Licensee, sold a twelve-pack of beer to a person under the age of 21. The sale of the alcohol occurred in response to a compliance check investigated by law enforcement using a person under twenty one years of age in conformity with 1 C.C.R. 203-2, Regulation 47-604.

3. Pursuant to § 12-47-901(5)(c), C.R.S., it is illegal to sell fermented malt beverages, i.e., beer, to a person under the age of 21 years.

III. ORDER FOR SANCTIONS

Relying upon the stipulations set forth above, the Authority Orders as follows:

1. Licensee's Town of Avon Liquor License shall be, and is, **HEREBY SUSPENDED** for a period of ten (10) business days. Such suspension shall be served as follows:

- A. Five (5) days of the suspension shall be held in abeyance for a period of one (1) year from the date of the approval of this Stipulation by the Authority.

- I. With regard to the period of suspension to be held in abeyance, the Authority specifically finds that the public welfare and morals will not be impaired by permitting the Licensee to operate during the period set for suspension and that the suspension period held in abeyance will achieve the desired disciplinary purposes.

- II. The suspension period to be held in abeyance is contingent upon no further violations of the Colorado Beer or Liquor Codes, including all regulations thereunder, any portion of the Town of Avon Municipal Code concerning the sale or service of alcoholic beverages, or this Stipulation.

- III. If at any subsequent hearing or stipulation in lieu of hearing the Authority should find that the Licensee, during the one year abeyance period, violated any provision of the Colorado Beer or Liquor Codes, including all regulations thereunder, any portion of the Town of Avon Municipal Code concerning the sale or service of alcoholic beverages, or this Stipulation and the obligations imposed herein on the Licensee by the Authority, then the Authority shall, in addition to any other penalty imposed, order the Licensee to serve all days of suspension held in abeyance without further notice pursuant to this Stipulation.

- B. The remaining five (5) days of the suspension shall be satisfied by the Licensee paying a monetary fine in lieu of the suspension in accordance with § 12-47-601, C.R.S.

- I. In this regard, the Authority specifically finds that the public welfare and morals would not be impaired by permitting the Licensee to operate during the period of suspension and that the payment of the fine in lieu of suspension will achieve the desired disciplinary purposes.

- II. The Authority finds that the books and records of the Licensee are kept in a manner that loss of sales of alcoholic beverages, which the Licensee would have suffered had the suspension gone into effect, can be determined with reasonable accuracy; and

III. The Authority finds that the Licensee has not had its Liquor License suspended or revoked, nor had any suspension stayed by the payment of a fine, during the two (2) years immediately preceding the date of the complaint that has resulted in this Stipulation.

IV. The parties agree that the fine shall be the equivalent of twenty percent (20%) of the Licensee's estimated gross revenues from the sale of alcoholic beverages during a period of five (5) days, except that the fine shall not be less than Two Hundred Dollars (\$200.00) nor more than Five Thousand Dollars (\$5,000.00). The dates for the calculation of the fine shall be the five days immediately following the hearing before the Liquor License Authority: May 26 – 30, 2010.

V. The Licensee shall submit a computer printout or manual accounting of the sales of alcohol for the designated days set forth above to the Town Clerk by no later than June 7, 2010.

VI. Within five business days of receipt of said accounting the Town Clerk shall invoice the Licensee the amount of the fine via certified mail or hand delivery.

VII. The Licensee shall remit cash, certified check or cashier's check to the Town Clerk for the total fine amount no later than five business days after the receipt of such invoice.

VIII. The Licensee shall timely comply with all of the obligations set forth in this Stipulation as well as any future dates or obligations required by the Town concerning documentation regarding the payment of any fine in lieu of suspension.

2. This Stipulation shall not be effective unless it is accepted and approved by the Liquor License Authority.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of my office this _____ day of May, 2010.


TOWN OF AVON, COLORADO
LIQUOR LICENSING AUTHORITY

By:
Chairperson

Attest:

Town Clerk

Stipulated and Agreed to:



Seth Murphy, No. 28768
Attorney for the Town of Avon



Jim Renfro, ATE Compliance Manager
Wal-Mart Stores, Inc.



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E-MAIL: sethm@friscolawyers.com
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**RICHMOND, SPROUSE
& MURPHY, LLC**
Attorneys at Law

EXHIBIT B

Mark Richmond
Frederick V. Sprouse
Seth Murphy

May 27, 2010

Jim Renfrow
ATF Compliance Manager
Wal-Mart & Sam's Club
Via Email Only: Jim.Renfrow@wal-mart.com

Matt Mower, Manager
Wal-Mart Supercenter #1199
P.O. Box 5220
Avon, CO 81620

**Re: Liquor Licensing Matters
Wal-Mart Supercenter #1199, Avon, Colorado**

Dear Mr. Renfrow and Mr. Mower:

As you are aware, on Tuesday, May 25, 2010 I appeared before the Town of Avon, Colorado Local Liquor Licensing Authority (the "Liquor Licensing Authority") on behalf of the Avon Police Department and presented the Stipulated Findings of Fact, Conclusions and Sanctions Order (the "Stipulated Order") that was negotiated and signed by myself and Mr. Renfrow concerning the liquor license violation that occurred at the Avon Wal-Mart on April 9, 2010.

After advising the Liquor Licensing Authority of the terms of the Stipulated Order, the Authority expressed concern that no representative from the Avon Wal-Mart was present at the meeting to discuss such issues as the remedial steps that the Avon Wal-Mart had taken in response to this incident. Additionally, the Liquor Licensing Authority noted that the annual renewal of the Avon Wal-Mart's liquor license was also coincidentally on the May 25th agenda, and they felt a representative of the Avon Wal-Mart should be present for the review of that item, also.

After discussing this issue, the Liquor Licensing Authority decided to continue both its consideration of both the Stipulated Order and the renewal of the Avon Wal-Mart's liquor license until its next regularly scheduled meeting and has requested that Mr. Mower appear at that meeting on behalf of the Avon Wal-Mart.

As such, this letter is written to provide you notice that both the consideration of the Stipulated Order and the renewal of the Avon Wal-Mart's liquor license have been continued to June 8, 2010 at 5:00 PM, and it is the Liquor Licensing Authority's expectation that Mr. Mower, or some other representative of the Avon Wal-Mart, will be present at that meeting.

I would be happy to discuss this matter further with either of you. Please do not hesitate to call.

Sincerely,


Seth Murphy
Attorney for Town of Avon Police Department

xc: Patty McKenny, Town Clerk
Eric Heil, Town Attorney

MEMO

TO: AVON LIQUOR LICENSING AUTHORITY
THRU: LARRY BROOKS, TOWN MANAGER
CC: ERIC HEIL, TOWN ATTORNEY
FROM: DEBBIE HOPPE, COURT CLERK
DATE: JUNE 3, 2010
RE: SPECIAL EVENT PERMITS – PUBLIC HEARINGS

SUMMARY:

The Town Council serving as the Local Liquor Authority will consider the following special event permits; **a public hearing is required for each license.**

- a. Applicant Name: Eagle Valley Humane Society
- Event Name: Thunderbird Art & Wine Affaire
- Event Location: Harry A. Nottingham Park
- Event Dates: July 16, 17, 18, 2010
- Event Manager: Char Quinn

BACKGROUND:

Special Events permits are issued by the Liquor Enforcement Division and a Local Authority to allow qualified non-profit entities to sell, serve or distribute alcohol beverages in connection with fund raising events. Because of their temporary nature, needs and desires (reasonable requirements of the neighborhood) are not considered by the licensing authorities as a condition of issuance. Applications are made directly with the local licensing authority having jurisdictions over the place of the event. Article 48 of Title 12 regulates the issuance of special events permits.

DISCUSSION:

The applicant above has applied for special event permit for the Thunderbird Arts Festival event taking place on July 16, 17 and 18 in Harry A. Nottingham Park. The applicant has provided all the appropriate materials. A background investigation was conducted on the applicants and the premises have been posted with notice of the public hearing. Char Quinn will be present to answer questions about the application.

Financial Implications: There is local liquor licensing fees associated with the special event permits. The applicants have submitted the appropriate state & local fees.

TOWN MANAGER COMMENTS:

SPECIAL EVENT PERMITS ATTACHMENTS:

The applicants for the special events permit have submitted the following materials:

- ✓ Applications for a Special Events Permits (State form DR 8439)
- ✓ Diagram where liquor will be served
- ✓ Alcohol Management Plans
- ✓ Certificates of Good Standing
- ✓ Background Checks
- ✓ Related state & local Fees

Memo

To: Avon Liquor Licensing Authority
Thru: Larry Brooks, Town Manager
cc: Eric Heil, Town Attorney
From: Debbie Hoppe, Court Clerk & Patty McKenny, Town Clerk 
Date: June 4, 2010
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: Wal-Mart Stores, Inc d/b/a Wal-Mart Supercenter#1199
Address: 171 Yoder Avenue
Manager: Matthew Mower
Type: 3.2% Beer License (Off Premises)
- b. Applicant: TCF 1 d/b/a Zacca Za
Address: 101 Fawcett Road #100
Manager: Paul Ferzacca
Type: Hotel and Restaurant Liquor 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. Police Report results are summarized below:

- There has been one liquor code violation where an employee sold alcohol to minor on April 9, 2010. This matter is currently being addressed by the Avon Liquor Authority.
- There have been no alcohol related calls for service at Zacca Za during the past year.

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 Memos

**TOWN OF AVON, COLORADO
MINUTES OF THE LOCAL LIQUOR LICENSING AUTHORITY MEETING
HELD MAY 25, 2010**

The Avon Town Council acting as the Local Liquor Licensing Authority for the Town of Avon, Colorado convened at 5:10 PM at the Avon Town Hall, One Lake Street, Avon, Colorado. A roll call was taken and Board members of the Authority present were Ron Wolfe as Chairperson, and Board members Dave Dantas, Rich Carroll, Kristi Ferraro, Amy Phillips, Buz Reynolds and Brian Sipes.

SHOW CAUSE HEARINGS ON ESTABLISHMENT VIOLATIONS

a. Finnegan's Wake Irish Pub LLC d/b/a Finnegan's Wake Irish Pub (*Eric Heil, Town Attorney*)

1. Colorado Liquor Enforcement Division Administrative Warning
Address: 82 E Beaver Creek Blvd. #1B
Manager: Maggie Parker
Date Reported:

Eric Heil, Town Attorney, presented this matter to the Liquor Licensing Authority noting that a stipulation was agreed upon with owner Maggie Parker, Finnegan's Wake. The agreement was to modify the existing stipulation to extend the period of the stipulation for an additional six months. He noted that the terms of the modification acknowledge the Notice of Liquor Law Violation dated April 7, 2010, based upon the alleged removal of alcohol from the premises by a patron on March 19, 2010; stipulates that the Town of Avon will not pursue sanctions or penalties for the alleged violation, and extends the original 12 month period of probation to 18 months, expiring on September 24, 2010. If a violation occurs before September 25, 2010, then the deferred 5 day suspension would be served and the Authority could conser additional suspensions based on the new violation. Board member Ferraro moved to approve the "Modification to Stipulated Findings of Fact, Conclusions and Sanctions Order"; Board member Phillips seconded the motion and it passed unanimously.

b. Saltwater Cowboy LLC d/b/a Saltwater Cowboy – **Continued from May 11, 2010**
(*Seth Murphy, Richmond, Sprouse, & Murphy, LLC Attorneys at Law*)

1. Avon Police Incident Report Case No. 2010-000192
Address: 48 E. Beaver Creek Blvd.
Manager: Stephen Bullock
Date Reported: March 21, 2010
2. Avon Police Incident Report Case No. 2010-000206
Address: 48 E. Beaver Creek Blvd.
Manager: Stephen Bullock
Date Reported: March 27, 2010

Seth Murphy, attorney representing the Avon Police Department, reviewed the two violations that occurred at Saltwater Cowboy. He noted that a stipulation was agreed upon, which dismissed the second violation which would have likely been more difficult to prove. He reviewed the details of the stipulation noting that TIPs training would be required for all employees; a 10 business day suspension would be imposed; the licensee could request that 5 days be paid with a fine in lieu of suspension, and 5 days would be held in abeyance for one year from the date of the stipulation, which is May 25, 2011. The owner would need to inform the town as to whether or not a request to pay a fine in lieu would be preferred. The stipulation also outlined that the days would need to be consecutive. Stephen Bullock, licensee, noted that all employees are now certified with TIPs training; that moving forward there would be a bouncer located at the entrance/exit, and that security cameras have been installed. Terry O'Connor, attorney representing Saltwater Cowboy, commented that this was the first violation for the establishment and that otherwise the restaurant / bar has been incident free. Board

member Ferraro moved to approve the "*Stipulated Findings of Fact, Conclusions and Sanctions Order*" for Saltwater Cowboy LLC d/b/a Saltwater Cowboy; Board member Phillips seconded the motion and it passed unanimously.

- c. Wal-Mart Stores, Inc d/b/a Wal-Mart Supercenter#1199
(Seth Murphy, Richmond, Sprouse, & Murphy, LLC Attorneys at Law)
 - 1. Avon Police Incident Report Case No. 2010-000238
Address: 171 Yoder Avenue
Manager: Matthew Mower
Date Reported: April 9, 2010

Seth Murphy, attorney representing the Avon Police Department, reviewed the violation that occurred with a compliance check at the Wal-Mart Supercenter Store; it was noted that the store has had two other violations in 2004 & 2005. Wal-Mart agreed to a ten day suspension with a request to pay a fine in lieu of the suspension per the Stipulation included in the Council packet. Eric Heil, Town Attorney, spoke about the state statutes that regulated the pay in lieu parameters. In noted that it would be important for the prosecuting attorney to have the ability to negotiate this piece of the stipulation to determine what is best on a case by case basis. Some discussion ensued on this topic with some board members preferring that the liquor licensing authority choose the dates. In light of the fact that the Wal-Mart Store Manager was not at the meeting, the authority decided to continue the matter; there were several questions to be asked in light of the violation and the renewal of the liquor license. Board member Sipes moved to continue the matter of the violation and "*Stipulated Findings of Fact, Conclusions and Sanctions Order*" for the Wal-Mart Stores Inc. d/b/a Wal-Mart Supercenter#1199 until June 8, 2010. Board member Dantas seconded the motion and it passed with a four to one vote (Carroll – nay). Both Mr. Murphy and staff noted the Mr. Mower had been invited to attend the meeting.

PUBLIC HEARING ON SPECIAL EVENT PERMITS

- a. Applicant Name: Team Evergreen Bicycle Club, Inc.
Event Name: 2010 Triple Bypass
Event Date: July 10, 2010; 11 AM until 9 PM
Event Manager: Jenny Anderson
Event Location: Harry A. Nottingham Park, Lower Field

Chairman Wolfe asked if the application was in order; Town Clerk Patty McKenny noted that all materials were submitted. Jenny Anderson was present to comment on the event and thank the town for its support over the years of the event. The public hearing was opened, no comments were made, the hearing was closed. Board member Dantas moved to approve the Special Events Permit for Team Evergreen Bicycle Club, Inc.; Board member Sipes seconded the motion and it passed unanimously.

PUBLIC HEARING ON SPECIAL EVENT PERMITS - CONTINUED

- b. Applicant Name: Eagle Valley Humane Society
Event Name: 2010 Salute to U.S.A.
Event Date: July 03, 2010; 4 PM until 11 PM
Event Manager: Char Quinn
Event Location: Harry A. Nottingham Park, Lower Field

Chairman Wolfe asked if the application materials were in order; Town Clerk Patty McKenny noted that all materials were submitted. Char Quinn, event manager, reviewed the event. Chairman Wolfe opened the public hearing, no comments were made, the hearing was closed. Board member Phillips moved to approve the Special Events Permit for Eagle Valley Humane Society; Board member Carroll seconded the motion and it passed unanimously.

RENEWAL OF LIQUOR LICENSES

- a. Applicant: Wal-Mart Stores, Inc d/b/a Wal-Mart Supercenter#1199
 Address: 171 Yoder Avenue
 Manager: Matthew Mower
 Type: 3.2% Beer License (Off Premises)

Board member Phillips moved to continue the renewal of the liquor license for the Wal-Mart Stores, Inc d/b/a Wal-Mart Supercenter#1199 until the June 8, 2010 meeting; board member Dantas seconded the motion and it passed with a four to one vote (Carroll – nay).

- b. Applicant: Benchmark Liquors, Inc d/b/a Beaver Liquors
 Address: 110 E. Beaver Creek Blvd.
 Manager: David Courtney
 Type: Retail Liquor Store

Chairman Wolfe asked if the application materials were in order; Town Clerk Patty McKenny noted that all materials were submitted. It was reported that there have been no incidences with this establishment. Board member Sipes moved to approve the Retail Liquor Store License for : Benchmark Liquors, Inc d/b/a Beaver Liquors; Board member Phillips seconded the motion and it passed unanimously.

CONSENT AGENDA

Board member Sipes moved to approve the minutes; Board member Ferraro seconded the motion and it passed unanimously by those voting (Carroll abstained).

- a. Minutes from May 11, 2010

Board member Ferraro moved to approve Resolution No 10-05; Board member Phillips seconded the motion and it passed unanimously.

- b. Resolution No. 10-05, Series of 2010, Resolution Village Warehouse Wines

There being no further business to come before the Board, the meeting adjourned at 5:40 PM.

RESPECTFULLY SUBMITTED:

Patty McKenny, Secretary

APPROVED:

Rich Carroll	_____
Dave Dantas	_____
Kristi Ferraro	_____
Amy Phillips	_____
Albert "Buz" Reynolds	_____
Brian Sipes	_____
Ron Wolfe	_____

Memo

To: Avon Local Liquor Licensing Authority
From: Patty McKenny, Town Clerk *PM*
cc: Larry Brooks, Town Manager
Eric Heil, Town Attorney
Date: June 3, 2010
Re: Liquor Board Agenda – Resolution No. 10-06 in the Matter of Saltwater Cowboy Violation and Penalty

Summary:

Please find attached Resolution No. 10-06 in the matter of the Hotel and Restaurant Liquor Store License for Saltwater Cowboy LLC d/b/a Saltwater Cowboy located at 48 E. Beaver Creek Blvd. and a recent liquor law violation. The Resolution memorializes the decision made by the Avon Liquor Authority at the May 25, 2010 meeting as to the penalty imposed on Saltwater Cowboy for this violation.

Background:

Stephen Bullock, owner of Saltwater Cowboy along with his attorney Mr. Terry O'Connor, appeared at the last Avon Liquor Licensing Authority meeting on May 25, 2010 and addressed the complaint from the Avon Police Department that reported the following two violations of CRS 12-47-901(1)(a), to sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of any alcohol beverage to a visibly intoxicated person, which is prohibited under this article:

- ✓ March 21, 2010 at Saltwater Cowboy, Allison Ault, an employee, was cited with violation of selling to an intoxicated person (Police Report # 2010-000192).
- ✓ March 27, 2010 at Saltwater Cowboy, Ricardo Aragon Ramos, an employee, was cited with violation of selling to an intoxicated person (Police Report # 2010-000206).

Discussion:

Seth Murphy, Attorney representing the Avon Police Department, reviewed the violations and presented the Stipulated Findings of Fact, Conclusions and Sanctions Order to the Liquor Licensing Authority. He noted that Mr. Bullock had agreed to the sanctions outlined in the document. The attached Resolution No. 10-06 outlines the matter with the Findings and Conclusions and the Order for Sanctions. Stephen Bullock, licensee, noted that all employees are now certified with TIPs training; that moving forward there would be a bouncer located at the entrance/exit, and that security cameras have been installed. Terry O'Connor, attorney representing Saltwater Cowboy, commented that this was the first violation for the establishment and that otherwise the restaurant / bar has been incident free. After hearing from the licensees and his attorney, the Avon Liquor Licensing Authority unanimously approved the document.

Town Manager Comments:

Attachments:

Attachment 1: Resolution No. 10-06, Series of 2010, Resolution making the determination Saltwater Cowboy LLC d/b/a Saltwater Cowboy has violated a law, rule or regulation with respect to the operation of its license premises; and imposing a 10 day (business days) liquor license suspension of the Hotel and Restaurant Liquor License as outlined in Exhibit A Stipulated Findings of Fact, Conclusions and Sanctions Order

ATTACHMENT ONE

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. 10-06 SERIES OF 2010

IN THE MATTER OF THE HOTEL AND RESTAURANT LIQUOR STORE LICENSE
FOR SALTWATER COWBOY LLC D/B/A SALTWATER COWBOY
FOR THE LICENSED PREMISES LOCATED AT 48 E. BEAVER CREEK BLVD., AVON, COLORADO

A RESOLUTION MAKING THE DETERMINATION THAT SALTWATER COWBOY LLC D/B/A SALTWATER COWBOY HAS VIOLATED A LAW, RULE OR REGULATION WITH RESPECT TO THE OPERATION OF ITS LICENSED PREMISES; AND IMPOSING A TEN (10) DAY LIQUOR LICENSE SUSPENSION OF THE HOTEL AND RESTUARNT LIQUOR LICENSE

WHEREAS, the Town Council of the Town of Avon, acting as the local licensing authority ("Liquor Licensing Authority"), has received two complaints from the Avon Police Department alleging that there are two violations of CRS 12-47-901(1)(a), to sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of any alcohol beverage to a visibly intoxicated person, which is prohibited under this article as follows:

- ✓ March 21, 2010 at Saltwater Cowboy, Allison Ault, an employee, was cited with violation of selling to an intoxicated person (Police Report # 2010-000192).
- ✓ March 27, 2010 at Saltwater Cowboy, Ricardo Aragon Ramos, an employee, was cited with violation of selling to an intoxicated person (Police Report # 2010-000206).

WHEREAS, Licensee appeared by Stephen Bullock, Owner and Manager, and admitted the violation;

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. The Liquor Licensing Authority finds and determines the following: The Licensee admits a violation of § 12-47-901(1)(a), C.R.S., concerning the sale of alcoholic beverages to a visibly intoxicated person, and stipulates that the facts alleged in the Show Cause Order did occur on March 21, 2010 as they pertain to the sale of alcohol to a visibly intoxicated person. The undersigned agree to the following factual basis for the Stipulation:

On March 21, 2010 at approximately 1:30 AM, Allison Ault, an employee of Saltwater Cowboy, sold an alcoholic beverage to a visibly intoxicated person.

3. Pursuant to § 12-47-901(1)(a), C.R.S., it is illegal to sell alcoholic beverages to any person who is visibly intoxicated.

4. The Show Cause Order issued to the Licensee concerning the allegation that the Licensee sold an alcoholic beverage to a visibly intoxicated person on March 27, 2010 is hereby withdrawn upon the stipulation of the parties.

Section 2. As the penalty for the violation, the Avon Local Liquor Licensing Authority imposes a penalty permitted under Regulation 47-604 and described in "Exhibit A" in the form of a Stipulated Findings of Fact, Conclusions and Sanctions Order" to the Licensee Saltwater Cowboy, a ten (10) business day liquor license suspension to be served. Details of the suspension are outlined in attached Exhibit A.

Section 3. This Resolution shall be effective immediately upon adoption.

RESOLUTION APPROVED AND ADOPTED THIS 8th DAY OF JUNE 2010.

TOWN OF AVON LIQUOR LICENSING
AUTHORITY

By _____
Ronald C. Wolfe, Chairman

ATTEST:

Patty McKenny, Town Clerk

TOWN OF AVON LIQUOR LICENSING AUTHORITY

**STIPULATED FINDINGS OF FACT, CONCLUSIONS
AND SANCTIONS ORDER**

In Re the Matter of the Hotel and Restaurant Liquor License of:

**Saltwater Cowboy LLC, d/b/a Saltwater Cowboy (the "Licensee")
Address: 48 East Beaver Creek Boulevard, Avon, Colorado**

This matter comes before the Town of Avon Local Liquor Licensing Authority (the "Authority") upon the Authority's Notice of Hearing; and Order to Show Cause, dated April 13, 2010 (the "Show Cause Order"), a copy of which was mailed to the representative of record for the Licensee by certified mail, return receipt requested.

I. INTRODUCTION

Section 12-47-601, C.R.S and 1 C.C.R. 203-2, Regulation 47-600 empower the Authority to conduct a hearing whenever a written complaint is made charging a licensee or its agents, servants or employees of a violation of any laws or rules or regulations adopted by the State Licensing Authority. After investigation and public hearing, at which the licensee shall be afforded an opportunity to be heard, if a finding is made that a violation has occurred, the Authority is authorized to consider whether to suspend or revoke a liquor or beer license.

II. FINDINGS AND CONCLUSIONS

1. The Licensee operates that business generally known as the Saltwater Cowboy Bar within the Town of Avon, Colorado and sells alcoholic beverages at such business pursuant to Town of Avon and State of Colorado liquor licenses.

2. **Factual Basis:** The Licensee admits a violation of § 12-47-901(1)(a), C.R.S., concerning the sale of alcoholic beverages to a visibly intoxicated person, and stipulates that the facts alleged in the Show Cause Order did occur on March 21, 2010 as they pertain to the sale of alcohol to a visibly intoxicated person. The undersigned agree to the following factual basis for the Stipulation:

On March 21, 2010 at approximately 1:30 AM, Allison Ault, an employee of Saltwater Cowboy, sold an alcoholic beverage to a visibly intoxicated person.

3. Pursuant to § 12-47-901(1)(a), C.R.S., it is illegal to sell alcoholic beverages to any person who is visibly intoxicated.

4. The Show Cause Order issued to the Licensee concerning the allegation that the Licensee sold an alcoholic beverage to a visibly intoxicated person on March 27, 2010 is hereby withdrawn upon the stipulation of the parties.

III. ORDER FOR SANCTIONS

Relying upon the stipulations set forth above, the Authority Orders as follows:

1. Licensee's Town of Avon Liquor License shall be, and is, **HEREBY SUSPENDED** for a period of ten (10) business days. Such suspension shall be served as follows:

A. Five (5) days of the suspension shall be held in abeyance for a period of one (1) year from the date of the approval of this Stipulation by the Authority.

I. With regard to the period of suspension to be held in abeyance, the Authority specifically finds that the public welfare and morals will not be impaired by permitting the Licensee to operate during the period set for suspension and that the suspension period held in abeyance will achieve the desired disciplinary purposes.

II. The suspension period to be held in abeyance is contingent upon the following:

a. The Licensee having no further violations of the Colorado Beer or Liquor Codes, including all regulations thereunder, any portion of the Town of Avon Municipal Code concerning the sale or service of alcoholic beverages, or the terms of this Stipulation during the one year abeyance period.

b. In an effort to prevent future violations, the Licensee shall have all current employees that sell, serve, dispense or handle alcoholic beverages trained with basic alcohol awareness training (TIPS) within 60 days of the date of the Authority's approval of this Stipulation, if those employees are not already so trained. Additionally, Licensee shall have any new employees that sell, serve, dispense or handle alcoholic beverages that are hired within one (1) year abeyance period TIPS certified within 60 days of such new employee's date of hire. The Licensee shall provide written proof of TIPS training for all employees to the Town Clerk within the timeframes set forth above.

III. If at any subsequent hearing or stipulation in lieu of hearing the Authority should find that the Licensee, during the one year abeyance period, violated any provision of the Colorado Beer or Liquor Codes, including all regulations thereunder, any portion of the Town of Avon Municipal Code concerning the sale or service of alcoholic beverages, or the terms of this Stipulation and the obligations imposed herein, then the Authority shall, in addition to any other penalty imposed, order the Licensee to serve all days of suspension held in abeyance without further notice.

B. The remaining five (5) days of the suspension may be satisfied by either:

I. The Licensee serving the period of suspension, over consecutive days and prior to Wednesday, June 9, 2010, less any days for which the Licensee petitions to pay a fine in lieu of such suspension; or

II. The Licensee paying a monetary fine in lieu of the suspension in accordance with § 12-47-601, C.R.S.

a. With regard to a fine in lieu of the suspension, the Authority specifically finds that the public welfare and morals would not be impaired by permitting the Licensee to operate during the period of suspension and that the payment of the fine in lieu of suspension will achieve the desired disciplinary purposes.

b. The Authority finds that the books and records of the Licensee are kept in a manner that loss of sales of alcoholic beverages, which the Licensee would have suffered had the suspension gone into effect, can be determined with reasonable accuracy; and

c. The Authority finds that the Licensee has not had its Liquor License suspended or revoked, nor had any suspension stayed by the payment of a fine, during the two (2) years immediately preceding the date of the complaint that has resulted in this Stipulation.

d. The parties agree that the fine shall be the equivalent of twenty percent (20%) of the Licensee's gross revenues from the sale of alcoholic beverages during the period for which a fine in lieu of suspension is petitioned for, except that the fine shall not be less than Two Hundred Dollars (\$200.00) nor more than Five Thousand Dollars (\$5,000.00). The dates for the calculation of the fine shall begin on the day immediately following the date of the incident, March 22, 2010, and shall run consecutively after such date for the full period for which a fine in lieu of suspension is petitioned.

e. If the Licensee petitions to pay a fine in lieu of suspension for all or any portion of the five (5) day suspension period, the Licensee shall submit a computer printout or manual accounting of the sales of alcohol for the designated days set forth above to the Town Clerk by no later than June 7, 2010.

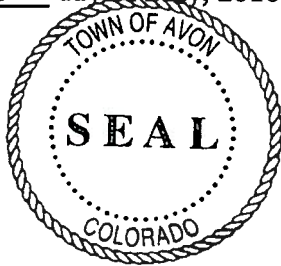
f. Within five business days of receipt of said accounting the Town Clerk shall invoice the Licensee the amount of the fine via certified mail or hand delivery.

g. The Licensee shall remit cash, certified check or cashier's check to the Town Clerk for the total fine amount no later than five business days after the receipt of such invoice.

h. The Licensee shall timely comply with all of the obligations set forth in this Stipulation as well as any future dates or obligations required by the Town concerning documentation regarding the payment of any fine in lieu of suspension.

2. This Stipulation shall not be effective unless it is accepted and approved by the Liquor License Authority.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of my office this 25th day of May, 2010.



TOWN OF AVON, COLORADO
LIQUOR LICENSING AUTHORITY

Ronald C. Abate
By:
Chairperson

Attest:

Paul J. McHugh
Town Clerk

Stipulated and Agreed to:

Seth Murphy
Seth Murphy, No. 28768
Attorney for the Town of Avon

Stephen Bullock
Stephen Bullock, Manager
Saltwater Cowboy, LLC

Approved as to form:

Terry O'Connor
Terry O'Connor, No. 9574
Attorney for Saltwater Cowboy, LLC



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**RICHMOND, SPROUSE
& MURPHY, LLC**
Attorneys at Law

Mark Richmond
Frederick V. Sprouse
Seth Murphy

May 27, 2010

Terry O'Connor, Esq.
Heckman & O'Connor, PC
Via email only: toconnor@heckmanoconnor.com

**Re: YOUR CLIENT: SALTWATER COWBOY, LLC
SIGNED STIPULATED ORDER**

Dear Terry:

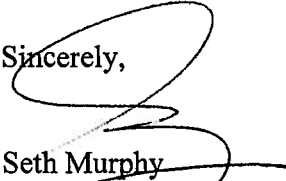
Please find attached a copy of the Stipulated Findings of Fact, Conclusions and Sanctions Order as signed by all parties and the Town of Avon Local Liquor Licensing Authority (the "Stipulated Order").

According to the terms of that Stipulated Order, Saltwater Cowboy has the option to either serve five consecutive days of liquor license suspension prior to June 9, 2010 or request to pay in lieu of that five day suspension. To request to pay such a fine, Saltwater Cowboy needs to submit computer printouts or a manual accounting of its sales of alcohol for March 23 – 27, 2010 by no later than June 7, 2010. The Town Clerk will then calculate the fine and notify your client of the amount of the fine.

Additionally, and notwithstanding the above 5 days of suspension, an additional 5 days of suspension remains held in abeyance for one year on the conditions set forth in the Stipulated Order.

Thank you. Please do not hesitate to call me to discuss this matter further if necessary.

Sincerely,


Seth Murphy
Attorney for Town of Avon Police Department

xc: Patty McKenny, Town Clerk
Eric Heil, Town Attorney