MINUTES OF THE MEETING OF THE UTAH

 ALCOHOLIC BEVERAGE CONTROL COMMISSION

HELD TUESDAY, MAY 28, 2019, AT 1625 SOUTH

900 WEST, SALT LAKE CITY, UTAH.

*[The proposed agenda for this meeting was emailed to all persons on the regular email list on Wednesday, May 22, 2019. A copy of the final agenda was posted on the bulletin board at the DABC Administrative Office, emailed to the Salt Lake Tribune and the Deseret News, and posted on the Utah Public Notice Website by 10:00 a.m. on Monday, May 27, 2019.]*

Chairman John T. Nielsen called the meeting to order at 10:00 a.m.

Commissioners Present: John T. Nielsen, Thomas Jacobson, Steven Bateman, Amanda Smith, Sophia DiCaro, Jacquelyn Orton, and Stanley B. Parrish.

Staff Present: Cade Meier, Deputy Director; Man Diep, Finance Director; RuthAnne Oakey-Frost, Compliance and Licensing Director; and Tim Beardall, Internal Audit Director.

Also Present: Sheila Page, Assistant Attorney General.

PLEDGE OF ALLEGIANCE:

Nicole Tarleton led the group in the Pledge of Allegiance.

APPROVAL OF MINUTES:

Upon motion of Mr. Jacobson, seconded by Mr. Bateman, it was unanimously voted to approve the minutes of the Commission Meeting held April 30, 2019.

ANNOUNCEMENTS:

Mr. Nielsen made the following announcements:

a. Proposed Future Meeting Schedule: *(subject to change)*

 - Tuesday, June 25, 2019

 - Tuesday, July 30, 2019

b. License Renewals:

 - Friday, May 31, 2019

 Deadline for paying all fees and filing all paperwork for Bar

 Establishment license renewals.

VIOLATIONS:

 \* Referral Source – State Bureau of Investigation (SBI)

a. Consent Calendar:

*[The following Consent Calendar items include uncontested letters of admonishment (written warnings) and settlement agreements that have been agreed to and accepted by the licensees. They are considered as a block with one vote unless one of the commissioners request that any item be removed for individual discussion. A summary of consent calendar items was distributed to the commissioners and is attached and made part of these minutes.]*

 (1) Antica Sicilia, Salt Lake and Taylor \*SBI (RE)

 Westbrook (employee).

 (2) ~~Burgers and Barley, Park City and Adriana~~ *STRIKE*

 (3) Epic Casual Dining, Midvale and Tiera \*SBI (RL)

 Maughan (employee).

 (4) Even Stevens, Salt Lake and Isaac Bentley \*SBI (RL)

 and Ryan Ross (employees).

 (5) Hampton Inn & Suites @ SLC Airport, \*SBI (LB)

 and Lutimila Halemaka (employee).

 (6) Magleby’s Grill & Oyster Bar, Springville \*SBI (RL)

 and Stormie Williams (employee).

 (7) Other Place, Salt Lake and Carlos Perez \*SBI (RL)

 (employee).

 (8) Roberts Restaurant & Deli, Salt Lake and \*SBI (RE)

 Sherelyn Herd (employee).

 (9) Twigs Bistro & Martini Bar, Murray and \*SBI (RE)

 Dakota Velasquez (employee).

 (10) Valley Bowling Lanes, Taylorsville and \*SBI (BE)

 Samantha Money (employee).

 (11) Slap Fish, Park City and Mary Shoemaker \*SBI (RB)

 (employee).

 (12) Sushi House, American Fork and Meihua \*SBI (RL)

 Zhoung (employee).

 (13) Basin Markets, Ogden and Scott Nieto \*SBI (OP)

 (employee).

 (14) Park City Rotary Club, Park City. \*SBI (SE)

Sheila Page asked the commissioners to strike #2 Burgers and Barley. She noted the balance of the items on the consent calendar are complete and recommended approval.

Mr. Parrish moved to continue #2 Burgers and Barley to the next meeting and approve the balance of the items on the consent calendar. Ms. DiCaro seconded the motion which passed unanimously.

b. Orders to Show Cause:

1. Neptuno Event Center, Orem.

Cori Price explained that in March a manager’s background came back with a disqualifying offense. She contacted the licensee at that time to see how they wanted to resolve the issue. Staff didn’t hear from licensee until a week ago when they applied for an event permit and found out the manager would need to be removed prior to the permit being considered. Ms. Price expressed frustration that they didn’t communicate until the issues were brought before the commission.

Oscar Saldana and Scott Matthews came forward to address the commission. Mr. Saldana explained that they received their license on March 8, 2019. He was notified of the disqualifying background check and responded initially but didn’t follow up. He apologized that he didn’t respond earlier by removing the manager or looking at other options. He noted they have a special event on June 8, 2019 with Mr. Matthews.

Mr. Nielsen clarified that the order to show is under consideration, not the special event permit. Mr. Jacobson questioned if the manager is still working, as it is his wife. If she isn’t managing, has someone been hired to fill the position?

Mr. Saldana explained that they are not open every day as they are an event center. When they are, he is the manager as his wife’s name is being removed from the license.

The commissioners, Mr. Saldana, Mr. Matthews, Ms. Page, Ms. Oakey-Frost and Ms. Price discussed the events that lead to the order to show and the actions the commission may take on the license. Mr. Jacobson expressed concern that a new manager hasn’t been hired and passed a background check. He suggested Mr. Saldana sign under penalty of perjury that Mrs. Saldana will not be participating in managerial duties. Ms. Smith expressed concern that the commission may not have the authority to require a declaration.

Mr. Jacobson moved to not take action against the license held by Neptuno Event Center in Orem provided that Mr. and Mrs. Saldana sign a declaration, under penalty of perjury, that Mrs. Saldana will not be participating in managerial duties until such time she has obtained an expungement of record; and, by May 30, 2019, Mr. Saldana will submit a name of the new manager in order for the department to do a timely background check. Mr. Bateman seconded the motion. Mr. Nielsen, Mr. Jacobson, Mr. Bateman, Ms. DiCaro, Ms. Orton, and Mr. Parrish voted yea; Ms. Smith voted nay. The motion passed. Ms. Smith explained her vote noting it is very important that licensees respond in a timely manner to department requests; however, she doesn’t believe the commission has the authority to require an additional declaration as their authority is over licensing. If the rules aren’t strong enough, they should be reviewed rather than requiring additional burdens.

Mr. Bateman asked staff if the commissioners are providing the support needed to help get a licensee’s attention before an order to show cause is issued. Ms. Oakey-Frost will have an update at the next commission meeting. Mr. Nielsen also asked that Ms. Oakey-Frost research the commission’s authority regarding declarations.

1. The Yes Hell, Ogden.

Cori Price explained that she received a letter that the tax license for The Yes Hell was revoked. As a result, they are no longer able to sell food or alcohol.

Melissa Peterson, the owner, came forward to explain that the tax license is currently revoked and she is working to get it reinstated today or tomorrow. Ms. Page noted it is a statutory requirement. Ms. Peterson offered to provide a copy of the email proof that a payment plan will be in place.

Mr. Jacobson moved to suspend the license for The Yes Hell in Ogden until such time as the applicant is able to provide to staff proof of the tax clearance. Mr. Bateman seconded the motion which passed unanimously.

c. Update on Status of Orders to Show Cause:

 (1) ~~La Frontera (400 S.), Salt Lake City~~. *STRIKE*

 (2) ~~Cannella’s, Salt Lake City~~. *STRIKE*

 (3) Avant Groove, Salt Lake City. (BAR)

Stephne Hanson reminded the commission that the bar license for Avant Groove was suspended last month due to disqualifying background checks. Representatives from Avant Groove would like to address the commission today.

John Vecchi, Semisi Latu, and Dusten Heugly came forward. Mr. Heugly addressed the question that the license had been pledged to another entity or individual by saying that there was a letter of intent to put together an agreement that was not enforceable. Their former attorney wasn’t available so they thought what they were doing was compliant with the law. Mr. Heugly confirmed that the license had not been pledged as collateral. He also addressed the safety concerns noting they will be hiring a new head of security and including off-duty Salt Lake City Police Officers on their security team. Ms. Hanson will also be doing a training for their staff; as well as a three month review.

Mr. Nielsen moved to lift the bar license suspension for Avant Groove and allow them to continue to operate with a new manager pending a background clearance. Ms. DiCaro seconded the motion which passed unanimously.

 (4) Bigelow Hotel & Residences, Ogden. (HL)

Margaret Hardie explained that the order to show was continued last meeting to give them time to resolve their licensing issues resulting from the bar closure after flooding. Ms. Hardie noted that she has been communicating with them and thought they would be in attendance today. A representative from Bigelow was not at the meeting.

Ms. Hardie stated that the biggest issue is that they no longer comply with the licensing requirement of a hotel license. They only have two operating sublicenses (restaurant and banquet catering) and need three to hold a hotel license.

Mr. Jacobson moved to deem the hotel license for Bigelow Hotel & Residences in Ogden forfeited. Mr. Bateman seconded the motion which passed unanimously.

MOTION TO RESOLVE AGENCY ACTION:

a. Down Under Club, Woods Cross.

Ms. Oakey-Frost explained that Down Under Club has a club license. They received a sale to minor violation last summer and an agency notice was sent. This was their second violation of this type. Jeff Buckner from the Attorney General’s office reached out to them multiple times and he did not receive a response. A Motion for Entry of Default was filed to determine that they did sale to a minor and to assess a penalty for the violation.

Ms. Oakey-Frost outlined the options the commission has including suspension, fine, revocation or a combination. The violation schedule includes a 10 to 120 day suspension and a fine of $1,000 to $25,000.

Mr. Jacobson expressed concern at the licensee’s lack of communication with staff and the AG’s office.

Mr. Jacobson made a motion to assign Down Under Club in Woods Cross the maximum fine of $25,000, a 120 day suspension, and costs. Mr. Bateman seconded the motion which passed unanimously.

TRANSFER OF LOCATION REQUEST:

a. La Puente Mexican Restaurant.

 From: 3540 South State Street, Salt Lake City.

 To: 3205 South State Street, Salt Lake City.

Cori Price gave an over of the request noting it is complete and staff recommends approval.

Ms. Smith moved to approve a transfer of location for La Puente Mexican Restaurant in Salt Lake City. Mr. Parrish seconded the motion which passed unanimously.

MANUFACTURE DISTILLERY APPLICANTS:

a. Silver Reef Brewing Company, Washington City.

Steve Wallenda gave an overview of the application noting it is complete and staff recommends approval.

Mr. Jacobson moved to approve a manufacture distillery license for Silver Reef Brewing Company in Washington City. Ms. Smith seconded the motion which passed unanimously.

b. ~~Salt Flats Spirits, Salt Lake City~~. *STRIKE*

INDUSTRIAL MANUFACTURING APPLICANT:

a. Wasatch Extraction, Salt Lake City.

Dan Oberg gave an overview of the application noting it is complete and staff recommends approval.

Mr. Bateman moved to approve an industrial manufacturing license for Wasatch Extraction in Salt Lake City. Ms. Smith seconded the motion which passed unanimously.

OFF-PREMISE BEER RETAILER APPLICANTS:

a. Completed Applications. *(list attached)*

Stephne Hanson noted that there are two lists. The first list includes the off-premise beer retailer applications that have met the training requirement and are complete. Staff recommends approval of the 103 applications.

b. Conditional Applications. *(list attached)*

Ms. Hanson gave an overview of the second list that includes the off-premise beer retailer applications that are complete and have met the training requirement, but are conditional as they are missing a business license. Staff recommends approval.

Ms. Orton moved to approve both the completed and conditional off-premise beer applications. Ms. DiCaro seconded the motion which passed unanimously.

COMMISSION POLICY ON CONSIDERATION OF APPLICATIONS:

This item was continued to the June meeting.

HOTEL LICENSEE REQUESTING ADDITIONAL SUBLICENSE:

a. Snowpine Lodge @ Alta Ski Resort, Alta. (BE)

Stephne Hanson gave an overview of the request to add an on-premise beer recreational sublicense to the hotel license. Staff recommends approval.

Ms. Smith moved to approve the addition of an on-premise beer recreational sublicense to the hotel license held by Snowpine Lodge @ Alta Ski Resort. Ms. DiCaro seconded the motion which passed unanimously.

WINTER SEASONAL RESTAURANT REQUESTING FULL YEAR LICENSE:

a. Viking Yurt, Park City.

Margaret Hardie explained that they currently have a winter seasonal full service restaurant license and want to be open year around.

Mr. Parrish moved to grant a full year full service restaurant license to Viking Yurt in Park City. Mr. Jacobson seconded the motion which passed unanimously.

LICENSE APPLICATIONS:

a. License Transfers:

(1) Bangkok Thai on Main, Park City. (RE)

(2) Club Monsoon, Park City. (LB)

 (3) P.F. Chang’s China Bistro, Orem. (RE)

 (4) P.F. Chang’s China Bistro, Salt Lake City. (RE)

Margaret Hardie gave an overview of license transfers #1 Bangkok Thai and #2 Club Monsoon noting they both have new ownership but are not moving. Staff recommends approval.

Ms. DiCaro moved to grant license transfers to #1 Bangkok Thai on Main in Park City and #2 Club Monsoon in Park City. Ms. Smith seconded the motion which passed unanimously.

Ms. Hardie gave an overview of the P.F. Chang’s China Bistro transfer applications noting they had a change in ownership of 51% or over. Staff recommends approval.

Mr. Bateman moved to grant license transfers to #3 P.F. Chang’s China Bistro in Orem and #4 P.F. Chang’s China Bistro in Salt Lake City. Ms. Smith seconded the motion which passed unanimously.

b. Full Service Restaurant Applicants:

 *Previous Applicant:*

 (1) La Cueva Restaurant Mexicano, Torrey.

 *New Applicants:*

(1) P.F. Chang’s China Bistro, Farmington. *(Conditional)*

(2) Weller’s Bistro on Main, Layton. *(Conditional)*

 (3) ~~Strap Tank, Lehi~~. *STRIKE*

 (4) Tin Angel Eccles, Salt Lake City. *(Conditional)*

(5) Osteria Amore, Salt Lake City. *(Conditional)*

(6) Joe’s Crab Shack, Sandy.

Mike Bishop asked the commissioners to strike new applicant #3 Strap Tank and gave an overview of the previous and new applications noting those that are conditional.

Mr. Bateman moved to approve conditional full service restaurant licenses for new applicants #1 P.F. Chang’s China Bistro in Farmington, #2 Weller’s Bistro on Main in Layton, #4 Tin Angel Eccles in Salt Lake City, and #5 Osteria Amore in Salt Lake City; and approve full service restaurant licenses for #6 Joe’s Crab Shack in Sandy and previous applicant #1 La Cueva Restaurant Mexicano in Torrey. Ms. Smith seconded the motion which passed unanimously.

c. Bar Establishment Applicants:

 *Previous Applicants:*

(1) Bout Time Pub & Grub Hillsbury, West Valley City. *(Violation*

 *History) (Conditional)*

(2) Punch Bowl Social, Salt Lake City. *(Conditional)*

(3) Redemption, Herriman. *(Conditional)*

 *New Applicants:*

(1) Button Up, Salt Lake City. *(Requesting Summer Seasonal)*

 (2) Beehive Distilling, Salt Lake City.

Pam Shields noted one full and two summer seasonal licenses are available. She gave an overview of the new applications noting those that are conditional and that new applicant #1 Button Up is requesting a summer seasonal license.

Ms. Shields also reminded applicants that bar licenses are up for renewal so if they receive a license today, they will have to turn around and renew it.

Ms. Smith moved to grant a bar establishment license to new applicant #2 Beehive Distilling in Salt Lake City; and a summer seasonal bar establishment license to new applicant #1 Button Up in Salt Lake City. Ms. DiCaro seconded the motion which passed unanimously.

d. Banquet Catering Applicant:

 *New Applicant:*

 (1) Springhill Suites by Marriott, Moab. *(Conditional)*

Jeff Colvin gave an overview of the application noting it is conditional. Staff recommends approval.

Mr. Jacobson moved to grant a conditional banquet catering license to #1 Springhill Suites by Marriott in Moab. Mr. Bateman seconded the motion which passed unanimously.

e. Limited Service Restaurant Applicants:

 *New Applicants:*

(1) Hideout Steakhouse of Heber City, Heber City.

 (2) Clubhouse Grill/Thanksgiving Point Golf Course, Lehi.

 *(Conditional)*

(3) Hidden Cuisine, Moab.

 (4) ~~Forscher German Bakery & Café, Orderville~~. *STRIKE*

 (5) Culichi Kitchen, Orem. *(Conditional)*

(6) Element Park City, Park City. *(Conditional)*

(7) Ika Sushi, Sandy.

Nicole Tarleton asked the commissioners to strike #4 Forscher German Bakery & Café and gave an overview of the applications noting those that are conditional. Staff recommends approval.

Ms. Smith moved to grant conditional limited service restaurant licenses to #2 Clubhouse Grill/Thanksgiving Point Golf Course in Lehi, #5 Culichi Kitchen in Orem, and #6 Element Park City in Park City; and limited service restaurant licenses to #1 Hideout Steakhouse of Heber City in Heber, #3 Hidden Cuisine in Moab, and #7 Ika Sushi in Sandy. Ms. DiCaro seconded the motion which passed unanimously.

f. On-Premise Beer (Recreational Amenity) Applicant:

 *New Applicant:*

 (1) Social Axe, Ogden. *(Conditional)*

Jeff Colvin noted that Social Axe of Ogden has submitted a new application.

Mark Floyd from Social Axe in Ogden came forward to address the commission. Mr. Floyd explained that in order to comply with the new law, they have added pool and billiard tables, food service, and an arcade area. They are applying as a pool and billiard hall.

Mr. Jacobson expressed concern that after reading the statute, is it enough to be a billiard parlor by putting one table in the establishment. Does it meet legislative intent? Mr. Jacobson suggested the building have signage reflecting a pool table business. Ms. Page noted the commission does not have jurisdiction over signage except at state liquor stores.

Steve Lister from Social Axe also came forward and outlined their business plan. The commissioners, Mr. Floyd, Mr. Lister, and Mr. Buckner discussed the statute and its interpretation.

Ms. Smith moved to grant a conditional on-premise beer recreational license to #1 Social Axe in Ogden. Ms. Orton seconded the motion. Ms. Smith, Ms. Orton, Mr. Nielsen, Mr. Bateman, Ms. DiCaro and Mr. Parrish voted yea; Mr. Jacobson abstained. The motion passed.

g. On-Premise Beer Only Restaurant Applicant:

 *New Applicant:*

 (1) Chedda Burger Gateway, Salt Lake City. *(Conditional)*

Jeff Colvin gave an overview of the application noting it is complete and staff recommends approval.

Ms. DiCaro moved to grant a conditional on-premise beer only restaurant license to #1 Chedda Burger Gateway in Salt Lake City. Ms. Smith seconded the motion which passed unanimously.

h. On-Premise Beer Only Tavern Applicant:

 *New Applicant:*

 (1) Bewilder Brewing Company, Salt Lake City. *(Conditional)*

Jeff Colvin gave an overview of the application noting it is complete and staff recommends approval.

Ms. DiCaro moved to grant a conditional on-premise beer only tavern license to #1 Bewilder Brewing Company in Salt Lake City. Ms. Smith seconded the motion which passed unanimously.

SENATOR JERRY STEVENSON *(not on agenda)*

Mr. Nielsen invited Senator Jerry Stevenson to come forward and address the commission. Senator Stevenson thanked the commission for their service. He reminded everyone that legislation, especially when DABC is involved, takes a long time and is a moving target. He encouraged stakeholders to continue to dialogue with legislators and DABC in preparation for the next session.

Mr. Nielsen thanked Senator Stevenson for attending and for his support of the commission and industry.

OPERATIONS UPDATE:

a. Rare High Demand Product Drawing.

Mr. Meier gave an overview of the proposed drawing system for rare high demand products. Products, and dates they will be available, will be announced at commission meetings. Interested customers will be able to register online prior to the drawing. Department employees and their immediate family will not be able to participate. The system is still being tested.

b. Operations Subcommittee Update. Mr. Bateman asked Mr. Meier to provide an overview of the items discussed in the Operations Subcommittee meeting.

* The department continues to work with vendors and suppliers as the department and convenience/grocery stores respond to the new law allowing higher point beer to be sold in the grocery market. The change will go into effect November 1, 2019. Beer makes up 10% of total sales. The department calculated a possible loss but a plan is in place to replace the inventory with higher point products. The department plans to continue with the philosophy to not compete with the open market.
* The department has been able to give more employee salary increases this year. The legislature approved additional funds to provide an Adjusted Salary Increase (ASI) to high performing employees.

c. Package Agency Audits.

Steve Wallenda reported that three consignment package agencies were audited and found to be in compliance. Ten Type 5 agencies were also audited and found to be in compliance.

FINANCIAL UPDATE:

Man Diep reported that as of the end of April 2019, YTD bottle sales increased 8.04% (3,179,072 bottles) compared to last year. YTD retail sales are up $21,821,332 a 5.8% increase.

PARENTS EMPOWERED UPDATE:

Doug Murakami gave an update on the activities of the Parents Empowered Campaign. The campaign participated in the Utah PTA Convention. Attendees were asked if they were familiar with the PE campaign and most were but several new opportunities were identified.

Mr. Murakami and those involved with the campaign are responding to question and information requests from the State Auditor’s staff.

COMMENTS FROM COMMISSIONERS AND PUBLIC:

* Tanner Strickland Lenart came forward to address the commission. Ms. Lenart announced that the Utah County Bar is holding a fee free Expungement Day on June 26, 2019.
* Steve Conlin from Ogden’s Own Distillery came forward to thank the operations side of the department. Rob Southworth and Tony Gann assisted in the limited release of a very popular product this month.
* JP Bernier from Hammer Spring Distillery came forward to address the commission. He asked about the new inventory system and how it affects manufacturers and package agencies. Cade Meier will follow up with Mr. Bernier.
* Stuart Brown from Strap Tank Brewery came forward to express frustration with the communication between licensees and compliance officers. Compliance staff will follow up with Mr. Brown.

There being no further business, the meeting adjourned at 12:00 p.m.

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Chairman