MINUTES OF THE MEETING OF THE UTAH

ALCOHOLIC BEVERAGE CONTROL COMMISSION

HELD TUESDAY, JULY 30, 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 Thursday, July 25, 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, July 29, 2019.]*

Chairman John T. Nielsen called the meeting to order at 10:05 a.m.

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

Staff Present: Salvador Petilos, Director; 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:

Jeff Colvin led the group in the Pledge of Allegiance.

APPROVAL OF MINUTES:

Mr. Parrish moved to approve the minutes of the Commission Meeting held on June 25, 2019; the Special Commission Meeting held on June 28, 2019; and the Special Commission Meeting held on July 15, 2019. Ms. DiCaro seconded the motion which passed. Mr. Jacobson abstained from voting on the June 25, 2019 minutes.

ANNOUNCEMENTS:

Mr. Nielsen made the following announcements:

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

- Tuesday, August 27, 2019

- Tuesday, September 24, 2019

PROPOSED ADMINISTRATIVE RULES:

a. R81-1-23 Sales Restrictions on High Demand Products of Limited Availability.

Ms. Oakey-Frost explained that this an amendment to the rule for allocating high demand products of limited availability. It authorizes the department to make policies when the director determines a special procedure is appropriate for the fair distribution of the high demand products.

b. R81-1-33 Alcohol Content.

Ms. Oakey-Frost explained that this new rule is pursuant to legislation passed during the recent legislative session. It provides a safe harbor if the department samples and tests a beer or heavy beer for alcohol content and the results are slightly off. The tolerance level mirrors that in Utah statute and is lower than Federal levels.

c. R81-1-34 Transfer Agreements.

Ms. Oakey-Frost noted that this new rule is also pursuant to legislation passed during the recent legislative session. It memorializes the practices of the department in regards to interim alcoholic beverage management agreements often used during the license transfer process.

d. R81-10-2 Off-Premise Beer Retailer State License and Master Off-Premise Beer

Retailer State License.

Ms. Oakey-Frost explained that recent legislation created a master off-premise beer retailer license. This amendment is necessary to create the process to apply for the master off-premise beer retailer license.

Mr. Nielsen confirmed that the proposed administrative rules and amendments were reviewed and approved by the Alcoholic Beverage Control Advisory Board.

Ms. DiCaro moved to approve the proposed administrative rules and amendments R81-1-23 Sales Restrictions on High Demand Products of Limited Availability, R81-1-33 Alcohol Content, R81-1-34 Transfer Agreements, and R81-10-2 Off-Premise Beer Retailer State License and Master Off-Premise Beer Retailer State License, to be submitted to the rulemaking process. Mr. Bateman seconded the motion which passed unanimously.

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) Burgers and Barley, Park City and Adriana \*SBI (RL)

Stan (employee).

(2) Black Sheep Cafe, Provo and Sabrina \*SBI (RE)

Peters (employee).

(3) Steiny’s Family Sports Grill, Logan and \*SBI (RL)

Cheyanne Lefaver (employee).

(4) Bucket O’ Crawfish, West Valley and \*SBI (RB)

Andrea Carlson (employee).

(5) Fast Stop 3186, Ogden and Shafiullah \*SBI (OP)

Haq (employee).

(6) Fifth, Bountiful. \*SBI (BAR)

(7) Guras Spice House, Herriman and Dhan \*SBI (RL)

Rai (employee).

(8) Harbor Seafood & Steak Co., Salt Lake and \*SBI (RE)

Madison Orr (employee).

(9) Lamplite Lounge, Ogden. \*SBI (BAR)

(10) Lucky Slice Pizza, Ogden and Jake Bright \*SBI (RE)

and Danielle White (employees).

(11) Tipsy Cow Saloon, Spanish Fork. \*SBI (BAR)

(12) Mahider Ethiopian Restaurant, Salt Lake \*SBI (RL)

and Temesgen Bizuyie (employee).

(13) Red Duck, Ogden and Sohail Khan \*SBI (OP)

(employee).

(14) Saltair Sky, Magna. \*SBI (BAR)

Sheila Page explained that #7 Guras Spice House has signed their settlement agreement but failed to pay their costs. She recommended that the settlement agreement be approved and that #7 Guras Spice House be given until 5:00 p.m. on Friday, August 2, 2019 to pay their costs. Ms. Page stated the balance of the items on the consent calendar are complete and recommended approval.

Mr. Bateman moved to approve the settlement agreement for #7 Guras Spice House and to give them until 5:00 p.m. on Friday, August 2, 2019 to pay their costs of $127; and to approve the balance of the items on the consent calendar. Mr. Jacobson seconded the motion which passed unanimously.

b. Pending Order to Show Cause:

(1) ~~Avant Groove/Button Down, Salt Lake City~~. *STRIKE*

c. Orders to Show Cause:

(1) Cactus Room, Virgin. (RL)

Ms. Oakey-Frost explained that a hearing was scheduled for a sale to minor violation. The Administrative Law Judge (ALJ) requested a time change (same date) but they were unable to confirm so the hearing was held at the original time and date. The licensee was unavailable for the hearing. The ALJ issued a default order and gave the licensee ten days to object. There was no response from the licensee regarding the default order.

Jeff Buckner provided additional background information noting the standard settlement agreement for a third violation was sent to the licensee. The licensee requested a hearing. He also outlined the number of attempts that were made to communicate and that statute requirements were met in regards to notifying the licensee. The default order issued by the ALJ is a $9,000 fine; 15-day suspension; and costs of $319. Violation training should also be included.

Robert Korros from the Cactus Room came forward to address the commission. Mr. Korros expressed frustration with the way the Attorney General’s Office communicated with him. He explained that the person that served the alcohol wasn’t an employee and he didn’t ask her to help. He asked that the commission forgive the violation.

Mr. Nielsen noted that these issues should have been raised with the ALJ. The item before the commission today is whether or not to accept the default order.

Mr. Jacobson moved to adopt the recommendation of the Administrative Law Judge. The commissioners, Ms. Page, Ms. Oakey-Frost and Mr. Korros discussed the communication string.

Mr. Jacobson moved to adopt the recommendation of the Administrative Law Judge of a $9,000 fine; 15-day suspension; and costs of $319. The suspension is to begin August 1, 2019. Mr. Parrish seconded the motion which passed unanimously.

(2) ~~Foothill One Stop, Logan~~. *STRIKE*

(3) ~~Smith’s #279, Ogden~~. *STRIKE*

MANUFACTURE BREWERY APPLICANTS:

a. Epic Brewing Company, Salt Lake City.

b. Strap Tank, Lehi.

c. Heber Valley Brewing Company, Heber. (MB and Type 5 Package Agency)

Jeff Colvin gave an overview of the applications noting they are complete and staff recommends approval.

Mr. Jacobson moved to approve manufacture brewery licenses for Epic Brewing Company in Salt Lake City; Strap Tank in Lehi; and Heber Valley Brewing Company in Heber along with a Type 5 package agency license. Mr. Bateman seconded the motion which passed unanimously.

OFF-PREMISE BEER RETAILER APPLICANTS:

a. Completed Applications. *(list attached)*

b. Conditional 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. The second list 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. DiCaro moved to approve both the completed and conditional off-premise beer applications. Mr. Jacobson seconded the motion which passed unanimously.

LICENSE APPLICATIONS:

a. License Transfers:

(1) Tarahumara Restaurant & Tequileria, Midway. (RE)

(2) Italian Village, Murray. (RL)

(3) Wingstop #081, West Jordan. (RB)

(4) Wingstop #082, Taylorsville. (RB)

(5) Red Robin #416, Provo. (RE)

(6) Red Robin #410, Murray. (RE)

(7) Red Robin # 411, South Jordan. (RE)

(8) Red Robin #412, Layton. (RE)

(9) Red Robin #413, Salt Lake City. (RE)

(10) Red Robin #414, West Valley City. (RE)

(11) Sizzler #142, West Valley City. (RL)

(12) Sizzler #229, South Jordan. (RL)

(13) Sizzler #439, Logan. (RL)

(14) Sizzler #541, Sandy. (RL)

(15) Sizzler #588, Layton. (RB)

(16) Sizzler #875, Provo. (RB)

(17) Gateway Grille, Kamas. (RL)

(18) Club Rio, Moab. (BAR) *(Conditional)*

(19) Yoko Ramen, Salt Lake City. (RE) *(Conditional)*

Margaret Hardie gave an overview of the license transfers noting those that are conditional. Staff recommends approval.

Mr. Parrish moved to grant license transfers to #1 Tarahumara Restaurant & Tequileria in Midway, #2 Italian Village in Murray, #3 Wingstop #081 in West Jordan, #4 Wingstop #082 in Taylorsville, #5 Red Robin #416 in Provo, #6 Red Robin #410 in Murray, #7 Red Robin #411 in South Jordan, #8 Red Robin #412 in Layton, #9 Red Robin #413 in Salt Lake City, #10 Red Robin #414 in West Valley City, #11 Sizzler #142 in West Valley City, #12 Sizzler #229 in South Jordan, #13 Sizzler #439 in Logan, #14 Sizzler #541 in Sandy, #15 Sizzler #588 in Layton, #16 Sizzler #875 in Provo, and #17 Gateway Grille in Kamas; and conditional license transfers for #18 Club Rio in Moab, and #19 Yoko Ramen in Salt Lake City. Ms. Orton seconded the motion which passed unanimously.

b. Full Service Restaurant Applicants:

*New Applicants:*

(1) Saffron Circle, Herriman. *(Conditional)*

(2) La Cantina Mexican Grill, Layton. *(Conditional)*

(3) La Puente, Layton. *(Conditional)*

(4) The Holy Grill, Pleasant Grove.

(5) La Frontera, Salt Lake City.

(6) Mazza Middle Eastern Cuisine, Sandy. *(Conditional)*

(7) Legends Pub & Grub Southtown, Sandy.

Nicole Tarleton gave an overview of the applications noting #1 Saffron Circle, #2 La Cantina Mexican Grill, #3 La Puente and #6 Mazza Middle Eastern Cuisine are conditional. Staff recommends approval.

Mr. Bateman moved to approve conditional full service restaurant licenses for #1 Saffron Circle in Herriman, #2 La Cantina Mexican Grill in Layton, #3 La Puente in Layton and #6 Mazza Middle Eastern Cuisine in Sandy; and full service restaurant licenses for #4 The Holy Grill in Pleasant Grove, #5 La Frontera in Salt Lake City and #7 Legends Pub & Grub Southtown in Sandy. Ms. DiCaro seconded the motion which passed unanimously.

c. Bar Establishment Applicants:

*Previous Applicants:*

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

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

*New Applicant:*

(1) Trolley Wing Company, Salt Lake City. *(Conditional)*

Dan Oberg gave an overview of the applications noting #2 Redemption and new applicant #1 Trolley Wing Company are conditional. He explained that there are no licenses available but Trolley Wing Company would like to address the commission.

Jess Wilkerson from Trolley Wing came forward and explained that they are building out a trolley car and are hoping to have it built in six weeks. This will be their third location.

d. Hotel License Applicant:

*New Applicant:*

(1) Ramada Cedar City, Cedar City.

Mike Bishop gave an overview of the application noting it is complete and staff recommends approval.

Ms. DiCaro moved to grant a hotel license to #1 Ramada Cedar City in Cedar City. Ms. Orton seconded the motion which passed unanimously.

e. Limited Service Restaurant Applicants:

*New Applicants:*

(1) Vessel Kitchen, Midvale.

(2) Shake Shack Utah, Sandy.

(3) Nepali Chulo, Salt Lake City. *(Conditional)*

(4) The Notch, Kamas.

(5) Midici #7361, Sandy. *(Conditional)*

Pam Shields gave an overview of the applications noting those that are conditional. Staff recommends approval.

Mr. Jacobson moved to grant conditional limited service restaurant licenses to #3 Nepali Chulo in Salt Lake City and #5 Midici #7361 in Sandy; and limited service restaurant licenses to #1 Vessel Kitchen in Midvale, #2 Shake Shack Utah in Sandy, and #4 The Notch in Kamas. Mr. Bateman seconded the motion which passed unanimously.

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

*New Applicant:*

(1) Fat Cats, Saratoga Springs. *(Violation History)*

Mike Bishop gave an overview of the application noting Fat Cats has a violation history at other locations. In November 2018 they had a sale to minor violation at their Salt Lake location that was adjudicated in February 2019. In February 2019 they had multiple violations at their full service restaurant in Ogden that was adjudicated in April 2019.

Dave Card and Thomas Wilson from Fat Cats came forward to address the commission. Mr. Card explained the actions taken after the violations. The Ogden location is no longer a restaurant. It now operates under a beer recreational license. Mr. Card also gave an overview of the new Saratoga Springs location and outlined the control measures they are putting in place to avoid future violations.

Mr. Bateman moved to grant an on-premise beer recreational license to #1 Fat Cats in Saratoga Springs. Mr. Parrish seconded the motion which passed unanimously.

g. On-Premise Beer Only Restaurant Applicants:

*New Applicants:*

(1) Sur Latin Street Food, Kamas.

(2) El Green Burrito, Tooele.

Mike Bishop gave an overview of the applications noting staff recommends approval.

Mr. Jacobson moved to grant an on-premise beer only restaurant license to #1 Sur Latin Street Food in Kamas, #2 El Green Burrito in Tooele. Ms. Orton seconded the motion which passed unanimously.

h. On-Premise Beer Tavern Applicant:

*New Applicant:*

(1) Heber Valley Brewing Company, Heber City. *(Conditional)*

Mike Bishop gave an overview of the application noting it is conditional and staff recommends approval.

Ms. DiCaro moved to grant a conditional on-premise beer tavern license to #1 Heber Valley Brewing Company in Heber City. Mr. Parrish seconded the motion which passed unanimously.

i. Package Agency Applicants:

*New Applicants:*

(1) ~~Bear Lake Beverage, Garden City~~. *STRIKE*

(2) Boulder Package Agency, Boulder (Type 2)

(3) Ephraim Package Agency, Ephraim (Type 3)

Jeff Colvin asked the commissioners to strike #1 Bear Lake Beverage and gave an overview of the remaining applications. Staff recommends approval.

Ms. Orton moved to grant the a Type 2 package agency license to #2 Boulder Package Agency in Boulder and a Type 3 package agency license to #3 Ephraim Package Agency in Ephraim. Mr. Jacobson seconded the motion which passed unanimously.

OPERATIONS UPDATE:

a. Product Locator App Presentation.

Cade Meier gave a presentation on the new Product Locator App. The app has options such as submitting special orders, finding stores, searching for products, and participating in the rare high demand product drawing. Customers can download the app for free and it should be available soon.

Mr. Bateman asked about the cost and developer. Mr. Meier responded Mindfire was the developer and it cost around $175,000. Mr. Petilos added that those with androids may be able to download the app now; the department is working with Apple and expect the IOS app will be available soon. The drawing this month is for the Yamasaki Collection. This is a test offering multiple products in one drawing.

b. Listed Items.

Cade Meier reported a 192 items were evaluated with 78 being accepted, five one-time buys, and 106 items were discontinued. Purchasing is working on the beer listing/delisting in prepare for November 1, 2019.

c. Package Agency Audits.

Jeff Colvin reported that eight package agencies were audited and found to be in compliance.

d. Consignment Increase for PA 306 Centerfield.

Jeff Colvin reported the Centerfield package agency is requesting a consignment increase from $30,000 to $35,000 to cover the increase in tourist traffic.

Mr. Jacobson moved to approve a consignment increase from $30,000 to $35,000 for PA 306 in Centerfield. Mr. Bateman seconded the motion which passed unanimously.

FINANCIAL UPDATE:

Man Diep reported that as of the end of June 2019, YTD bottle sales increased 7.48% (3,612,375 bottles) compared to last year. YTD retail sales are up $25,634,578 a 5.65% increase.

COMMENTS FROM COMMISSIONERS AND PUBLIC:

* Tom Shay came forward to address the commission. He expressed frustration that customers are not able to compare the cost per ounce of the products. He asked that the stores provide a per ounce or milliliter cost so customers are able to make informed decisions.
* Button Down. Former employees of Button Down including Jasmine Delosa and Aaron Watts came forward to address the commission regarding possible violations and criminal activities at the bar. Several more were in attendance. Ms. Oakey-Frost clarified that the department is not a law enforcement agency. Their concerns will be forwarded to the State Bureau of Investigations.
* Steve Conlin from Ogden’s Own Distillery came forward to express frustration with the new Symphony System. He feels unique products like Porter’s Rye should be introduced with guidance from people, not the Symphony System. Cade Meier will meet with Mr. Conlin to address his concerns.
* Marty Phipps, owner of Bear Lake Beverage in Garden City, came forward to express frustration that he is unable to hold a package agency license due to proximity to a church. The statute requires 600 feet, the measurement is 522 feet. He asked for some flexibility. Mr. Nielsen explained that the legislature took away the commission’s ability to be flexible.
* J.P. Bernier with Hamstring Distillery also came forward to express frustration with the Symphony System and having his products delisted from stores. Mr. Meier offered to meet with Mr. Bernier.

There being no further business, the meeting adjourned at 11:25 a.m.

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Chairman