MINUTES OF THE MEETING OF THE UTAH

 ALCOHOLIC BEVERAGE CONTROL COMMISSION

HELD TUESDAY, DECEMBER 17, 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 Friday, December 13, 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, December 16, 2019.]*

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

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

Staff Present: Salvador Petilos, Director; Cade Meier, Deputy Director; RuthAnne Oakey-Frost, Compliance and Licensing Director; Angela Micklos, Compliance and Licensing Director; and David Higley.

Also Present: Sheila Page, Assistant Attorney General.

PLEDGE OF ALLEGIANCE:

Cori Price led the group in the Pledge of Allegiance.

APPROVAL OF MINUTES:

Mr. Jacobson moved to approve the minutes of the Commission Meeting held on November 26, 2019. Ms. DiCaro seconded the motion which passed unanimously.

ANNOUNCEMENTS:

Mr. Nielsen made the following announcements:

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

 - Tuesday, January 28, 2020

 - Tuesday, February 25, 2020

b. Store Hours:

 - Tuesday, December 24, 2019 (Christmas Eve)

All state liquor stores will close at 6:00 p.m.

 - Tuesday, December 31, 2019 (New Year’s Eve)

All state liquor stores will close at 7:00 p.m.

c. Holiday Closures:

 Liquor stores and the DABC administrative office and warehouse will be closed:

 - Wednesday, December 25, 2019 (Christmas Day)

 - Wednesday, January 1, 2020 (New Year’s Day)

- Monday, January 20, 2020 (Martin Luther King Jr. Day)

d. License Renewals:

 - Friday, January 31, 2020

 Deadline for filing all renewal materials and paying fees for the following license types.

 - On-Premise Beer Recreational Amenity

 - On-Premise Beer Only Restaurants

 - On-Premise “Tavern”

 - Off-Premise Beer Retailers

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) ~~Charleston Café, Draper and Peyton~~ *STRIKE*

 (2) Ridley’s Family Market #1150, Hyrum, and \*SBI (OP)

 Samantha Bown (employee).

 (3) Chubby’s Mexican Restaurant, Salt Lake \*SBI (RB)

 and Samantha Bown (employee).

 (4) Comb Ridge Eat & Drink, Bluff and Justin \*SBI (RL)

 Howland (employee).

 (5) Duffy’s Tavern, Salt Lake. \*SBI (BAR)

 (6) Eddie McStiff’s, Moab and Chelsey \*SBI (RE)

 Myers (employee).

 (7) Green River Grill, Dutch John and Chutiya \*SBI (RE)

 Dachosart (employee).

 (8) Hyrum Chevron, Hyrum and Robyn \*SBI (OP)

 Broadhead (employee).

 (9) ~~Last Chance Store, Payson and Jesse~~ *STRIKE*

 (10) Old Bridge Grille, Mexican Hat and \*SBI (RE)

 Sylvester Benallie (employee).

 (11) Big Smoke #402, Salt Lake City and \*SBI (OP)

 Tamilee Kamai (employee).

 (12) Wicked Peel Kitchen, Riverton and \*SBI (RL)

 Whitney Washburn (employee).

 (13) ~~Petro Mart I, Ogden and Unique~~ *STRIKE*

Ms. Page asked the commissioners to strike #1 Charleston Café, #9 Last Chance Store and #13 Petro Mart. Ms. Page recommended the commissioners approve the balance of the items on the consent calendar.

Mr. Jacobson moved to strike #1 Charleston Café, #9 Last Chance Store and #13 Petro Mart and approve the balance of the items on the consent calendar. Mr. Bateman seconded the motion which passed unanimously.

b. Orders to Show Cause:

 (1) ~~Lovely Gift Shop, Taylorsville~~. *STRIKE*

 (2) ~~Eagles 67, Salt Lake City~~. *STRIKE*

c. Update on Order to Show Cause:

 (1) Barbacoa Mexican Grill, Salt Lake City. (RB)

Mike Bishop explained that the manager that had not completed the manager training or background check has been removed. The new manager has completed all requirements.

Glennon Unsworth from Barbacoa came forward to address the commission. He explained that the owner has a medical condition so he didn’t receive notification in time to appear last month. When he was made aware of the situation he contacted staff to get everything resolved.

Mr. Bateman moved to lift the suspension on the Barbacoa Mexican Grill beer only restaurant license. Mr. Parrish seconded the motion which passed unanimously.

EXTENDED CLOSURE REQUESTS:

a. Castle Creek Winery, Moab. (PA)

Jeff Colvin explained that they are requesting an extended closure until March 1, 2020 due to the seasonality of the area. Staff recommends approval.

Mr. Bateman moved to approve an extended closure until March 1, 2020 for Castle Creek Winery in Moab. Ms. DiCaro seconded the motion which passed unanimously.

b. Timpanogos Tavern, Heber. (BAR)

Erin Hinkel explained that they are requesting an extended closure until the January 2020 commission meeting. They are being forced to move due to a new highway project and have a buyer. They need the additional time to complete the license transfer. Staff recommends approval.

Mr. Jacobson moved to approve an extended closure until the January 2020 commission meeting for Timpanogos Tavern in Heber. Mr. Bateman seconded the motion which passed unanimously.

TRANSFER OF LOCATION REQUESTS:

a. Kuchu Shabu (RE)

 From: 1612 West Ute Boulevard #106, Park City.

 To: 3720 North Sundial Court #13, Park City.

Miraz Rasoul gave an overview of the request noting it is complete and staff recommends approval.

Ms. DiCaro moved to approve a transfer of location for Kuchu Shabu in Park City. Mr. Parrish seconded the motion which passed unanimously.

~~RELIGIOUS SPECIAL USE PERMIT APPLICATION:~~ *STRIKE*

BEER WHOLESALING APPLICANT:

a. Utah Craft Beverages, Ogden.

Abe Kader noted the applicant holds a local industry representative license and is seeking a beer wholesaling license in order to drop ship directly to DABC stores. Mr. Kader outlined the requirements to hold a wholesaling license, and the concerns the department has regarding the application. One concern discussed was that the applicant doesn’t own, lease or control a warehouse facility. Also, both beer and heavy beer are stored together in the small area leased from Golden Beverage. Mr. Kader added that the Compliance Director emailed Mr. Hutter several times and encouraged him to meet with staff. The application was returned with the explanation that the applicant doesn’t meet the statutory requirements for a wholesaling license. Staff does not recommend approval.

Tim Hutter from Utah Craft Beverages came forward to address the commission. He explained that they are a small boutique business selling high point beer and that it is hard to find a small space with refrigeration and a dock so they have been piggybacking off Golden Beverage. They would like to sell the brands that fall between 4.0% and 5.0% ABV.

The commissioners, Mr. Kader, and Mr. Hutter discussed statute requirements and inventory control. Mr. Kader noted the applicant’s product needs to be completely separate from Golden Beverage’s product. Also a beer wholesaler needs a separate liquor warehouse license for high point beer.

Mr. Nielsen, Mr. Jacobson and Mr. Parrish outlined the options the commission and Mr. Hutter have today as the application doesn’t meet statute requirements. Ms. Page stressed that Mr. Hutter isn’t currently licensed as a wholesaler and may not operate as one.

Ms. DiCaro made a motion to not approve the wholesaling license for Utah Craft Beverages in Ogden. Mr. Bateman seconded the motion which passed unanimously.

MANUFACTURE BREWERY APPLICANTS:

a. Bewilder Brewing Company, Salt Lake City.

b. Grid City Beer Works, Salt Lake City.

Jeff Colvin gave an overview of the applications noting they are complete and that the licenses are effective January 1, 2020. Staff recommends approval.

Ms. Orton moved to approve manufacture brewery licenses for Bewilder Brewing Company in Salt Lake City and Grid City Beer Works in Salt Lake City. Ms. DiCaro seconded the motion which passed unanimously.

MANUFACTURE WINERY APPLICANT:

a. Old Town Cellars, Park City.

Jeff Colvin gave an overview of the application noting it is complete and that the license is effective January 1, 2020. Staff recommends approval.

Mr. Parrish moved to approve a manufacture winery license for Old Town Cellars in Park City. Ms. Orton seconded the motion which passed unanimously.

OFF-PREMISE BEER RETAILER APPLICANTS:

a. Completed Applications. *(list attached)*

b. Conditional Applications. *(list attached)*

Stephne Hanson asked the commissioners to strike #2 El Pueblo Market in Payson on the completed application list. The balance of the applications are complete and staff recommends approval.

Mr. Bateman moved to strike completed application #2 El Pueblo Market in Payson and approve the balance of the completed and conditional off-premise beer retailer applications. Ms. DiCaro seconded the motion which passed unanimously.

LICENSE RENEWALS:

 Manufacture Breweries, Distilleries and Wineries Licenses.

 Local Industry Representatives Licenses.

 Public Service Licenses.

 Beer Wholesaling Licenses.

 Liquor Warehouse Licenses.

 Brewers Located Outside of Utah Certificates of Approval.

Stephne Hanson gave an overview of the license renewals noting they are complete and staff recommends approval.

Mr. Bateman moved to approve the renewals for the manufacture breweries, distilleries and wineries; local industry representative; public service; beer wholesaling; and liquor warehouse licenses; and the certificates of approval for brewers located outside of Utah. Ms. Orton seconded the motion.

Mr. Jacobson asked if the renewal lists included the local industry representative for Utah Craft Beverages and beer wholesaling license for Golden Beverage and suggested the renewals be held and reviewed by staff. Mr. Parrish expressed concern that Mr. Hutter, Utah Craft Beverages, has been operating illegally and should discontinue until he is properly licensed. Ms. Micklos confirmed staff has instructed him he is unable to transport or deliver product to the stores until he get the proper licensing.

Mr. Parrish made an amended motion to hold until the end of the meeting the local industry representative renewal application from Utah Craft Beverages; and beer wholesaling license application from Golden Beverage, and approve the balance of the renewals for the manufacture breweries, distilleries and wineries; local industry representative; public service; beer wholesaling; and liquor warehouse licenses; and the certificates of approval for brewers located outside of Utah. Ms. DiCaro seconded the motion which passed unanimously. *[see page 8)*

LICENSE APPLICATIONS:

a. License Transfers:

 ***51% or more ownership transfer of an existing entity****:*

 (1) La Costa Restaurant, American Fork.

 (2) La Costa Restaurant, Sandy. *(Conditional)*

Margaret Hardie gave an overview of the license transfer applications noting #2 La Costa Restaurant in Sandy is conditional. Staff recommends approval.

Mr. Bateman moved to grant a license transfer to #1 La Costa Restaurant in American Fork; and a conditional license transfer to #2 La Costa Restaurant in Sandy. Ms. Orton seconded the motion which passed unanimously.

b. Full Service Restaurant Applicants:

 *New Applicants:*

 (1) Bangkok House Too, Moab. *(Conditional)*

(2) Texas Roadhouse, South Jordan. *(Conditional)*

(3) Wing Nutz, South Jordan.

Jason Gunn gave an overview of the applications noting those that are conditional. Staff recommends approval.

Ms. DiCaro moved to approve a full service restaurant license for #3 Wing Nutz in South Jordan; and conditional full service restaurant licenses for #1 Bangkok House Too in Moab and #2 Texas Roadhouse in South Jordan. Ms. Orton seconded the motion which passed unanimously.

c. Bar Establishment Applicants:

 *Previous Applicants:*

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

(2) Grid City Beer Works, Salt Lake City. *(Conditional)*

(3) Jackson’s Base Camp, Park City. *(Conditional)*

(4) Calavera Cantina, Salt Lake City. *(Conditional)*

 *Pending Applicants:* (Pending applications more than 90 days from opening)

(1) Garage Grill, Herriman. *(Conditional)*

(2) Fox House, Salt Lake City. *(Conditional)*

(3) Fife Brewing Company, Salt Lake City. *(Conditional)*

Mr. Nielsen noted there are no licenses available.

d. Hotel Applicant:

 *New Applicants:*

1. The Homestead Resort, Midway. *(Conditional)*
2. The Advenire Hotel, St. George.

Cori Price gave an overview of the hotel applications noting #1 The Homestead Resort is conditional. Staff recommends approval.

Ms. DiCaro moved to approve a conditional hotel license for #1 The Homestead Resort in Midway; and a hotel license for #2 The Advenire Hotel in St. George. Mr. Parrish seconded the motion which passed unanimously.

LICENSE RENEWALS: *[continued – see page 7]*

Stephne Hanson reported that staff reviewed the renewal applications for Utah Craft Beverages and Golden Beverage and believe they are okay to approve.

Ms. DiCaro moved to approve the local industry representative renewal application from Utah Craft Beverages and the beer wholesaling license renewal application from Golden Beverage. Mr. Bateman seconded the motion which passed unanimously.

e. Limited Service Restaurant Applicants:

 *Previous Applicants:*

 (1) Sushi Monster, West Valley City.

 (2) ~~Salina Happy Hours, Salina~~. *STRIKE*

 *New Applicants:*

 (1) Hapa Sushi Japanese Cuisine, American Fork.

 (2) ~~Bowman’s Cowboy Kitchen, Cedar City~~. *STRIKE*

 (3) Crane Garden Asian Bistro, Payson.

 (4) Tandoor Indian Grill, Provo.

 (5) Kabuto Sushi, St George. *(Conditional)*

(6) Thai Archer, Salt Lake City. *(Conditional)*

(7) Elevo, Salt Lake City. *(Conditional)*

 (8) Eggs in the City, Salt Lake City. *(Conditional)*

(9) Mariscos Culiacan, Salt Lake City.

 (10) Banana Blossom Thai Cuisine, St George. *(Conditional)*

Miraz Rasoul asked the commissioners to strike previous applicant #2 Salina Happy Hours. She noted staff held an on-site training for previous applicant #1 Sushi Monster and they submitted a new RASP plan. Staff recommends approval.

Mr. Jacobson moved to approve a limited service restaurant license for #1 Sushi Monster in West Valley City. Ms. Orton seconded the motion which passed unanimously.

Ms. Rasoul asked the commissioners to strike #2 Bowman’s Cowboy Kitchen and to hold #6 Thai Archer as it will be considered separately. She gave an overview of the remaining applications noting those that are conditional.

Mr. Bateman moved to strike #2 Bowman’s Cowboy Kitchen and approve limited service restaurant licenses for #1 Hapa Sushi Japanese Cuisine in American Fork, #3 Crane Garden Asian Bistro in Payson, #4 Tandoor Indian Grill in Provo, and #9 Mariscos Culiacan in Salt Lake City; and conditional limited service restaurant licenses for #5 Kabuto Sushi in St. George, #7 Elevo in Salt Lake City, #8 Eggs in the City in Salt Lake City, and #10 Banana Blossom Thai Cuisine in St. George. Mr. Jacobson seconded the motion which passed unanimously.

Ms. Rasoul explained why staff does not recommend approval for #6 Thai Archer in Salt Lake City. The restaurant is 68 feet away and in proximity to the McKee Language School.

Ms. Page added that litigation has been filed regarding whether or not the commission is required to respond to a declaration action. The applicant maintains the application was denied. It was not denied as the application hasn’t been included on an agenda for consideration by the commission. The court is looking at whether or not it is appropriate for the department to deny the application. Ms. Page recommended that the commission look at the application and determine if McKee is a school. She continued that currently the commission has jurisdiction as an order hasn’t been issued.

Don Winder, representing Thai Archer, came forward to address the commission. Mr. Winder outlined the court proceedings and explained why they feel McKee doesn’t meet the definition of a school and should not be considered a community location.

The commissioners, Ms. Page, Ms. Oakey-Frost, and Mr. Winder discussed the definition of a school, the curriculum at McKee, and allowing an establishment to serve alcohol so close to a location where children congregate.

Mr. Nielsen clarified that the legislature removed the ability for the commission to grant a proximity variance. If the commission considers McKee a school, they have no discretion regarding proximity.

Mr. Jacobson made a motion that the commission determined The McKee School is a school under the Alcoholic Beverage Control Act. In 32B-1-102 “school” means a building used primarily for the general education of minors.

Mr. Nielsen commented that one purpose of alcohol regulation is to prevent access by children, especially unsupervised. Ms. DiCaro stated that she appreciates Mr. Winder’s arguments but will support the motion given the bounds of the language in 32B-1.

Mr. Bateman seconded Mr. Jacobson’s motion that the commission determined The McKee School is a school under the Alcoholic Beverage Act. The motion passed unanimously.

Mr. Jacobson moved that the limited service restaurant application from #6 Thai Archer be denied. Ms. Orton seconded the motion which passed unanimously.

f. On-Premise Beer Only Restaurant Applicants:

 *New Applicants:*

1. Junction Pizzeria & Grill, Midvale.
2. Caleo Restaurant, Midvale.

Cori Price gave an overview of the applications noting staff recommends approval.

Mr. Parrish moved to grant on-premise beer only restaurant licenses to #1 Junction Pizzeria & Grill in Midvale and #2 Caleo Restaurant in Midvale. Mr. Jacobson seconded the motion which passed unanimously.

g. On-Premise Beer Recreational Applicants:

 *Previous Applicant:*

 (1) Utah Food Services @ Capital Theater, Salt Lake. *(Conditional)*

 *New Applicant:*

 (1) Golf the Round, Salt Lake City.

Cori Price gave an overview of the applications noting staff recommends approval.

Mr. Bateman moved to grant a conditional on-premise beer recreational license to previous applicant #1 Utah Food Services @ Capital Theater in Salt Lake City and to new applicant #1 Golf the Round in Salt Lake City. Ms. DiCaro seconded the motion which passed unanimously.

OPERATIONS UPDATE:

a. Beer Update.

Mr. Petilos gave an update on the impact the beer alcohol content change has had on the department. The financial report show that for the period of July to November the department is trending toward a 6% increase in sales. The data for the current period is trending similarly to the financial data, but the department is seeing a decline in heavy beer sales. This decline in heavy beer sales is being offset by increased sales in spirits, ciders, wines, ready to drink cocktails, and FMBs.

FINANCIAL UPDATE:

Man Diep reported that as of the end of November 2019, YTD bottle sales increased 5.07% (1,072,116 bottles) compared to last year. YTD retail sales are up $12,749,586 (6.66% increase).

COMMENTS FROM COMMISSIONERS AND PUBLIC:

* Jay Yahne from Hive Winery came forward to address the commission. He commented on the online renewal process noting he would like to have hard copies of the renewal. Ms. Oakey-Frost explained that there is an option to download the renewal or he may contact a compliance officer.
* Emily Schultz from Fox House came forward to address the commission. She will be submitting an application for a bar. The location is close to a child care facility and asked for clarification as the child care facility is not primarily used for the education of minors. Mr. Nielsen encouraged her to work with compliance staff.

There being no further business, the meeting adjourned at 11:40 a.m.

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Chairman