



## MINUTES

### LOCAL LICENSING AUTHORITY

Tuesday February 20<sup>th</sup>, 2024 – 8:30 A.M.

City Council Chambers – 500 E. Third Street  
Loveland, Colorado

## CONSENT AGENDA

### A. Special Event Permit – City of Loveland Parks and Recreation – Adult Field Day 5/3/2024

Approval of Minutes:

### B. Minutes from LLA Meeting on January 18<sup>th</sup>, 2024 – Approved in their current form.

## 2. PUBLIC HEARING

### A. Show Cause Matter – Cactus Cantina Inc. dba Wicked Tequila Room

A motion has been filed, pursuant to the provisions of §44-3-901(6)(b)(I), C.R.S. as amended, to the Local Licensing Authority of the City of Loveland to consider suspension or revocation of the tavern liquor license issued to Cactus Cantina Inc., d/b/a Wicked Tequila Room, located at 123 E. 4<sup>th</sup> Street in Loveland. Findings and allegations concerning Colorado Liquor Regulation 47-910, Consumption Prohibited are to be considered.

**In Attendance:** Andrea Hall, Attorney, Christen French, Owner.

Mr. Bailey began with an opening statement and motioned to eliminate evidence provided by the licensee, stating that the exhibits have no relevance on whether the licensee violated Colorado State Code and Liquor code. Ms. Hall countered that, in relation to evidence portrayed in Exhibits 1-4, Ms. French had no knowledge of the events of August 30<sup>th</sup>, and argued that the exhibits are relevant as to whether Ms. French had actual or constructive knowledge of what Mr. Herrera (the bartender committing the violation), was doing on that night.

The Authority stated that because this hearing was quasi-judicial, rules of evidence do not apply and therefore will allow the exhibits.

Mr. Bailey referenced a 2005 appeal case, 11P 3rd 568, Full Moon Saloon vs. City of Loveland – in this court case, it was established that regardless of the actions of employees, a liquor licensee has a responsibility to uphold all rules and regulations set forth by the State due to the threat and impacts that alcohol beverage consumption can have on the public health and welfare.

Ms. Hall responded by citing a more recent case which shows that the licensee has to have actual or constructive knowledge, and her client had no constructive knowledge of the event. Ms. Hall added that Ms. French would have acted immediately had she known about the violation. Mr. Herrera had already been sentenced for the incident; he was fined and asked to complete community service. Furthermore, Mr. Herrera and Ms. French were never cited by the Police Officer on the night of the violation, PD contacted the licensee months later.

Mr. Bailey stated that constructive knowledge in the cases cited, as well as case law, is a knowledge that does not require extraordinary vigilance, it only requires reasonable diligence.

Police Officer Greg Harris was called to testify. Mr. Bailey asked if Officer Harris recalled what occurred on the night of August 30<sup>th</sup>, at around 2:30am. Officer Harris gave his account of what occurred that night while he was driving along 4<sup>th</sup> Street on standard patrol and heard music by Wicked Tequila and saw lights on at that establishment.

Mr. Bailey referenced the City's Exhibit 1: Officer Harris' body worn camera footage. Officer Harris acknowledged that this is his body cam footage. City Exhibits 2 and 3 consisted of the incident report and the summons/citation from the evening in question. Mr. Bailey requested that the exhibits be admitted and published. The Authority allowed the request.

Observing exhibit 1, Mr. Bailey confirmed the details of the footage with the witness. Ms. Hall countered stating that Exhibit 1 does not depict the entire interaction between the witness and Mr. Herrera.

Ms. Hall's Exhibit 5 (Officer Harris' body worn camera footage) was admitted as evidence. Review of Exhibit 5 depicted additional seconds of body cam footage. Ms. Hall cross-examined the witness and argued that Mr. Herrera was clearly not aware of the time when he interacted with Officer Harris. She further stated that since no citation was issued at the time, there is no case to stand on regarding this liquor license – she questioned Officer Harris as to why no citation was given until two months after the fact on order from his Sergeant.

Mr. Bailey followed up with questions to the witness, then Officer Harris was asked to sit, but to remain available for further questioning if necessary. Mr. Bailey then called Sergeant Jeff Mayers to the stand.

Upon being called to testify, Mr. Bailey asked Sgt. Mayers to identify himself for the record and explain how he came to head the liquor and tobacco enforcement unit. He indicated that the incident occurred during the timeframe that Sgt. Mayers was in the process of taking command of the unit, but took official command after the incident had occurred, and that this transition period created a resultant delay in citation.

Mr. Bailey brought up the City's Exhibit 4: Show Cause Affidavit and asked the witness questions relating to the Affidavit as it related to the violation. Sgt. Mayers determined that a violation of C.R.S. 44-3-901-6B-I had occurred, as stated on the Affidavit. Mr. Bailey stated that the violation also triggered a violation of the Colorado Liquor Rules, Regulation 47-910 Consumption Prohibited. No retail licensee shall permit the

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consumption of alcohol beverages during timeframes when such consumption is prohibited by law.

Ms. Hall's cross examination centered around the duration of time that Sgt. Mayers had led the LEU (Liquor Enforcement Unit), including the length of time that he had known Officer Harris, who has served on LPD longer than Sgt. Mayers. Ms. Hall asked the witness if he trusts Officer Harris' judgement, to which he attested. She continued to question the witness and argued that this incident was driven by subjective opinions of the officers involved and not based on legal grounds.

Mr. Bailey questioned Sgt. Mayers regarding the subjective believes brought up by Ms. Hall, and the structure and workflow of LPD; his explanation of how liquor violations are handled detailed that, although there may not be a citation at the time of an incident, if there is probable cause, there is nothing unusual about a citation being issued by the LEU after occurrence. Sgt. Mayers confirmed that the violation did occur, and further stated that the violation would have been addressed sooner, however there were only two Police Officers (Mayers and Spence) available in the unit at that time. Sgt. Mayers provided information about the City's free Alcohol Training Program.

Mr. Bailey asked the witness to explain the unit's role/responsibility and way of operation. Sgt. Mayers explained that LPD must consistently rely on patrol for active enforcement of liquor violations; Sgt. Mayers is also part of the City's crash reconstruction team, and his duties responding to severe and fatal traffic accidents are intertwined with his duties in liquor and tobacco enforcement.

The Authority asked the witness a follow-up question about the person in-charge of the LEU from Aug. 2023 to Oct. 2023 prior to his appointment as the head of the unit, and if this person would have had the opportunity to speak to Officer Harris about the incident. Sgt. Mayers answered the question, which led to Mr. Bailey asking him if it was rare for a citation to be issued well after an incident occurred. Sgt. Mayers replied by stating that it was not uncommon and that his team has about six months after occurrence to issue a citation for a misdemeanor, adding that staffing constraints also plays a role in this timeline.

Ms. Hall countered Mr. Bailey's closing with the fact that the regulation being violated should have been recognized as a violation by Officer Harris, and that a citation should have been issued at the time – it did not require a specialist interpretation. As Officer Harris' supervisor, Sgt. Mayers expressed his choice to handle this citation as it related to liquor enforcement. Ms. Hall asked Sgt. Mayers further question regarding the issuance of the citation.

The Authority asked the witness to sit, and Mr. Bailey stated that the City had no further witnesses and rested its case.

Ms. Hall began her presentation and called Mr. Nicholas Herrera to testify as her first witness. Mr. Herrera stated that he is employed as a Bartender at Wicked Tequila Room and has been working there for 9 months.

Ms. Hall provided Mr. Herrera with Exhibits 1 and 2 and asked him to describe the exhibits. Ms. Hall asked the witness to describe the TIPS certification, which he described. Ms. Hall asked further questions about the night of the incident referencing the Police cam footage. Mr. Herrera expressed that he was well-informed that it was not legal to sell or distribute alcohol after 2am. He stated that he simply had lost track of time and had poured the drink that attracted attention for himself, not for a patron.

Ms. Hall expressed that the City accuses him of lying, that he was aware of the time of morning during the incident – Mr. Herrera admitted fault and expressed that he strives to be honest and believes he is a trustworthy employee who complies with all rules and regulations, and further stated to Ms. Hall that he simply made a mistake that night.

Mr. Herrera was asked to describe the contents of the employee handbook, which he was asked to sign when he was employed. Ms. Hall asked Mr. Herrera to describe how the citation took place, and how he completed sentencing with municipal court. He stated that he was fined and required to complete community service, as well as re-certify for TIPS training and was also given 6 months of unsupervised probation. The only item pending completion is the community service. Mr. Herrera expressed that he does not believe that Ms. French would have approved of his actions during that evening, and that Ms. French would not condone that behavior at any of her establishments. Ms. Hall asked further questions regarding the incident and the ramifications of his actions.

Mr. Bailey cross-examined the witness and asked him to describe the TIPS training he received, if he likes his job and how long he has been a bartender. Mr. Bailey also asked the witness to describe all the procedures leading up to, and including, the closing of the bar/establishment, which the witness described to Mr. Bailey's satisfaction. Mr. Bailey further inquired about the timeframe which Mr. Herrera would have had to legally serve himself a drink, and if he was aware of the change in closing-time, as well as the time at which it is illegal to serve alcohol in the State of Colorado. Mr. Herrera stated his awareness of the rules and time restrictions. Mr. Bailey asked further questions relation to Mr. Herrera's responsibility as a bartender.

Ms. Hall questioned the witness regarding the closing time and last-call for the night of the incident, reiterating that Mr. Herrera had made a mistake, and asked Mr. Herrera why he chose to withdraw his plea agreement.

After a five-minute recess, the hearing was continued.

Ms. Christen French was called as a witness by Ms. Hall.

Ms. French described her history working in the bar and restaurant industry – it has comprised her entire working life and she grew up surrounded by that industry. She was involved in her family business, Cactus Grill, and subsequently opened her own bars, Wicked Tequila Room and Tom Davis Saloon.

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Ms. Hall inquired about liquor violations at those establishments, prior to opening Wicked Tequila, then about incidents that occurred at Wicked Tequila and their consequences. Ms. French described how incidents at Wicked Tequila resulted in the creation of a bouncer/security service to work for Ms. French's various businesses. This was the result of poor help and poor performance from previous security employees. Eric Phillips, a former police officer and private security contractor, was contacted to create "Traust Security Services" in response to the practices that resulted in numerous violations.

Traust Security currently holds a contract with the City of Loveland for the homeless shelter downtown, and the company also provides security for Loveland Sertoma Club events and is available for other private contracts.

Traust does not provide security for other bars in Loveland, solely Wicked Tequila, Tom Davis Saloon, and occasional service at Cactus Grille. In response to past violations at Wicked Tequila Room, the business has worked above and beyond the terms of resultant sanctions and employs a strict three-drink limit, non-entrance policy after 9pm, and ID scanners for all patrons.

Ms. Hall inquired about the two exhibits in front of Ms. French – 3 and 4, the employee handbook and code of conduct for Wicked Tequila and the exchange between Officer Harris and herself. Exhibit 4 consists of the unaltered, verbatim exchange between the Officer and Ms. French.

Ms. Hall's further inquiry related to TIPS certification. Ms. French described the importance of TIPS training to her establishment and working in the industry. She described Mr. Herrera as an experienced bartender; however, he had only worked in her establishment for 9 months at the time and had only closed Wicked Tequila Room once by himself prior to the night of August 30<sup>th</sup>.

Ms. French described Mr. Herrera as a model employee who had primarily worked in her restaurant, Cactus Grille, and in the past had a familiarity with her establishment and patrons as a performer.

Ms. Hall asked Ms. French about her subsequent exchange (Exhibit 4) with Officer Harris, who informed her that he wanted to make her aware of the incident, and made no indication that there would be a citation.

Ms. French went on to respond to questions that her bar has changed its hours to establish last call as 1am, and all patrons are to leave by 1:30am or 1:45am at the latest. Ms. French stated that she has had very long conversations with her employee, and he has admitted to his error and accepted the consequences fully.

Mr. Bailey's cross-examination began with an inquiry into 1. Ms. French's awareness of the law (2am provisions) and 2. Her responsibility as the registered manager of the establishment – she is, to an extent, responsible for the actions of employees, although acknowledged that certain things are completely out of her control.

Mr. Bailey inquired about the two prior violations that took place at her establishment. Ms. French displayed knowledge of these incidents, while downplaying the one related to overservice, admitted that the second violation was a loss of control of her establishment. This violation resulted in a fatal drunk-driving crash.

During the sentencing related to the DUI case, Benjamin Eisenberg was found to have been cut off at Wicked Tequila Room, and later asked to leave the establishment after being monitored, offered water and food – Wicked Tequila/Cactus Cantina Inc. was found not to be responsible in this case.

Ms. Hall followed up and asked Ms. French if she was under the impression that her establishment was required to call the police in this situation with Mr. Eisenberg – she stated that she did not contact them, nor would her business be allowed to detain or restrain a drunken patron – Ms. French described the incident in detail and stated her trust in the Police Department, but stated that she is aware that it would take them a significant time to respond to an incident and that this did not seem to necessitate contact with LPD.

Ms. French described that her establishment's employees were unaware of the amount of alcohol Mr. Eisenberg had consumed outside of the bar. Mr. Eisenberg displayed no characteristics that he was intoxicated; later after being permitted to enter and being served "a few" drinks, a server identified that he was beginning to stagger on the dance floor. Her bouncer offered Mr. Eisenberg water and food after staff decided to cut him off, however the man did not appear to be "falling down" drunk and was allowed to leave the bar; what transpired afterward was, "a bar owner's worst nightmare."

Ms. French established that her security staff is now present until after closing and walks staff members and patrons to their cars after last call – Traust Security consistently remains at the establishment and helps close at night.

The Authority clarified that while the establishment currently requires security to remain after closing, they were not present on the night of August 30<sup>th</sup>, 2023.

Witness testimony was closed, and the attorneys began their closing arguments.

Mr. Bailey: The reason why we are here is to determine whether or not a violation occurred. The evidence presented and witness testimony indicates that there was in fact a violation; it is the employer or licensee's responsibility to monitor the conduct of employees, train them adequately, but "constructive knowledge" is not a question – it is the licensee/employers responsibility to uphold the conduct of the establishment.

Ms. Hall: The violation presented by the court is that Ms. French permitted this violation to occur. The licensee has a responsibility to conduct its business in compliance with the law, and Ms. French has gone to great lengths to comply with the law, and this incident is an isolated event that is being blown out of proportion – in effect, there was no threat



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to public safety, as indicated by the delay in issuing a citation. Ms. Hall moved that the court should dismiss the allegations on the grounds that no actual or constructive knowledge of this event was present with the owner.

Mr. Bailey: In reference to the case of Full Moon Saloon, alcohol presents a danger to public health. If the standards surrounding the sale and service of alcohol were not present and are not actively enforced, they would hold no value. Ms. Hall's argument holds no basis in case law, it undermines liquor law outright. The fact the licensee is imputed to have constructive knowledge in the conduct of their business, then responsibility could be easily dismissed. The consistency of incidents taking place at Wicked Tequila Room makes this situation very clear. We cannot allow liquor license holders to interpret the laws as loose guidelines. Mr. Bailey asks that the court does indeed find that a violation did in fact occur.

The Authority responded that she will take this under advisement in the best interests of the City, the Licensee, and all parties involved. The case must be reviewed in fairness to the licensee and the City, and a written order will be released within 30 days.

#### **B. Tobacco License – Mellow Yellow Loveland LLC**

An application for a new tobacco license was filed on January 10<sup>th</sup>, 2024, by Mellow Yellow Loveland LLC, dba Mellow Yellow, located at 125 E. 37<sup>th</sup> Street, in Loveland, CO. This application is currently under consideration.

The authority was notified that Mr. Bertrand – Mellow Yellow Loveland LLC's Counsel – will not be present and is unavailable for this hearing. This matter will be continued on the March 21<sup>st</sup> LLA Meeting.

### **3. STAFF REPORT**

- A. City Clerk's Office – Retail Establishment and Art Gallery Permit: more information to come, changes discussed in recent meetings.
- B. Local Tobacco Licensing Rules Meeting – the Clerk's Office will coordinate a meeting with the Municipal Judge and the City Attorney's Office.
  - a. This meeting will occur in early March as an in-person meeting, to take place after March 4<sup>th</sup>. We will establish Municipal Tobacco Licensing Rules. We will require at least two hours of meeting time in the municipal courtroom.

### **ADJOURN**

The next regularly scheduled Local Licensing Authority Meeting will be held on Thursday, March 21<sup>st</sup>, 2024, at 8:30 AM, in the City Council Chambers.

Respectfully submitted,

3.21.2

Adriana Hernandez, Assistant City Clerk

Liquor Licensing Secretary

Approved:

Geri R. Jones

Geri R. Joneson, Municipal Judge

Liquor Licensing Authority