

FAIRVIEW BEER BOARD

June 10, 2013

Toney Sutton, Chairman
Beverly D Totty, Mayor
Stuart Johnson, Vice-Mayor
Allen Bissell, Commissioner
Patti Carroll, Commissioner
Brent Thomas, Citizen Member
John Hall, Citizen Member
Andrew Hyatt, City Manager
Larry Cantrell, City Attorney
Theresa Porter, City Recorder

Present: Sutton, Totty, Johnson, Carroll, Thomas

Others Present: Hyatt, Cantrell, Porter

Absent: Bissell, Hall

1. Chairman Sutton called the meeting to order at 6:00 p.m.
2. The minutes for the April 30, 2013 Beer Board meeting were presented for approval. Mayor Totty made a motion for approval. Vice-Mayor Johnson seconded. All were in favor.
3. Discuss and/or Take Action on an application submitted by Good Times & More, Joanne McCord, for a "Special Events" Beer Permit for the Independence Day Celebration on July 3, 2013, located at 7100 City Center Way. Chairman Sutton asked if all the appropriate paperwork was turned in. City Recorder Porter stated yes it was. Chairman Sutton made a motion for approval. Commissioner Carroll seconded. *For:* Sutton, Johnson, Carroll, Thomas *Against:* Totty
4. Settlement Conference - Attorney Cantrell stated that before we get into the settlement conference itself he stated that this is a settlement conference and there will be no evidence presented by either party tonight, everyone seems to be represented, we will ask you when your case is called to come to the podium and the charges will be read at that time. The Board will come to an agreement as to what they are going to offer in the nature of a settlement. He cautioned that you do not have to settle, if you do not settle there will be a mandatory hearing on July 11th at that time the city will put on their proof and you will be able to put on the proof that you desire. Tonight is only the settlement conference and if we reach settlements we will ask you to sign before you leave, you will have 7 working days to pay any fines that the Board should assess and you will have a chance to ask any questions that you may have when you are at the podium.

Attorney Cantrell did a roll call to see who was in attendance before the Beer Board started.

Case 1 – Raymoun S. Mikhael/Hickory Home - Present
Case 2 – Flying J/Pilot Travel Centers, LLC – Present
Case 3 – Flying J/Pilot Travel Centers, LLC – Present
Case 4 – Thomas Scott Kelly/Spinners Pizza - Present

Case 5 – Likki Manjula/Manjula, Inc. (Jay's BP) – Present

Case 6 – Anthony Vincent/Fairview Shell – Present

Case 1 - Attorney Cantrell called Raymoun S. Mikhaiel to the podium and verified that he was Raymoun S. Mikhaiel; he asked if he had an attorney, he stated he did not and then Attorney Cantrell read Mr. Mikhaiel the charges.

Chairman Sutton stated that this is the first offence. Vice-Mayor Johnson asked Mr. Mikhaiel what was the status of the employee? Mr. Mikhaiel stated that he terminated her about a week after. Chairman Sutton suggested a fine of \$500, a 10 day suspension, if it is paid in 7 days the suspension will be withdrawn upon payment. Chairman Sutton made a motion for approval. Vice-Mayor Johnson seconded. Attorney Cantrell did a roll call vote. For: Sutton, Totty, Johnson, Carroll, Thomas Absent: Bissell, Hall 5 Ayes, No Nays, 2 Absent

Mr. Mikhaiel accepted the settlement. Attorney Cantrell asked if he was a member of the responsible vendor program, he stated he was not.

Mr. Mikhaiel signed the form accepting the settlement.

Case 2 – The representative for Flying J/Pilot Travel Centers, LLC approached the podium. Attorney Cantrell stated that there had been a previous offense by Pilot Travel Centers, LLC back in October and the sentence at that time was a \$500 fine, 10 days suspension, our ordinance 8-222 states that if a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn. And in that case the civil penalty was paid and the suspension had to be deemed withdrawn which is the reason tonight's case #2 will have to be considered as the first offense. And the second reason is that the suspension was six months and while your suspension came down within the six months due to the court process and notification it is now outside six months. Attorney Cantrell asked the representative to state his name. He stated that he was Lewis Dunn, General Manager. Attorney Cantrell asked if he was a member of the responsible vendor program, he stated that he was not. Attorney Cantrell read the charges to Mr. Dunn.

Chairman Sutton offered the settlement to be, a \$500 fine, pending a 10 day suspension. Vice-Mayor Johnson asked Mr. Dunn if Mr. Young was still an employee and Mr. Dunn stated that he was not. Mr. Dunn stated that he attended Mr. Dunning's classes that he gave regarding selling to a minor and that he had just taken over this store right around the time this occurred and the original offense was before he got there and since he has been at this location he has implemented a zero tolerance policy and the purchaser must have an ID no matter who they are and you have to enter the birthdate into the computer and let the computer determine without them having to decide the year or the month. Commissioner Carroll stated that she appreciated all the efforts Mr. Dunn has taken to correct the situation and she understands that you can't control what your employees do at all times but ultimately it is your responsibility and asked if he would let his employees know that we are serious about this because we don't want our kids being served alcohol. Mr. Dunn stated that he understands and he is on top of this and it is a big deal to him. Commissioner Carroll seconded the motion. Attorney Cantrell did a roll

call vote. For: Sutton, Totty, Johnson, Carroll, Thomas Absent: Bissell, Hall 5 Ayes, No Nays, 2 Absent

Mr. Dunn signed the form accepting the settlement.

Case 3 – Mr. Dunn remained at the podium to represent Flying J/Pilot Travel Centers, LLC in case 3. Attorney Cantrell asked Mr. Dunn if he will be representing Pilot on this one also and he stated he would be and we noted that he is not a responsible vendor. Attorney Cantrell read the charges to Mr. Dunn. Chairman Sutton stated that this would be considered a second offense, at the time of this offense the maximum fine for a second offense is \$1,500 and that would be his motion plus you would have the 30 suspension on top of that. Attorney Cantrell reiterated that there would be a \$1,500 fine and 30 days suspension, suspended upon payment of the fine. Mayor Totty asked that Attorney Cantrell read the ruling on what we can do on the second offense. Mr. Cantrell read 'After such hearing that the charges are sustained by the evidence the Board may in its discretion suspend or revoke said permit, suspensions may be for 30, 60 or 90 days depending on the severity of the violations within the discretion of the board, provided, that convictions of employees of license holders for sales made to minors under the age of eighteen (18) years may result in suspensions of permits for six months, one year or two years in the discretion of the board' and the maximum fine is \$1,500. Vice-Mayor Johnson asked Mr. Dunn if this employee had been dismissed as well and Mr. Dunn stated yes. Vice-Mayor Johnson asked Mr. Dunn when he took over this location and Mr. Dunn stated that he took it over around November 1st and this was his first time managing a convenience store. Attorney Cantrell confirmed that you do the suspension and if you want to do the fine in lieu of, you can do that but you can't do both because the suspension is under one section, the beer board at the time it imposes a revocation or suspension offer permit holder the alternative of paying a civil penalty not to exceed \$1,500 which is now \$2,500, so you have an option to offer the fine or the suspension and that is at your discretion, it is the sale to a minor that evokes the suspension. Chairman Sutton stated that we need to go back and revisit the ordinance and make it a definite form. Attorney Cantrell stated that you can't do that because state law grabs some of those, you can set the standards but you would not do it in the ordinance and the ordinance that you have says you can impose a suspension and in lieu of that suspension you can assess a fine and that is your call. Mr. Dunn stated that in regards to asking for a fine or a suspension, financially he doesn't feel it will make a huge difference to the company but personally he is relatively new to the company and to have a suspension hanging over him is a pretty tough deal so on a personal note he would rather have the fine. Chairman Sutton stated that we need to come up with something that is the same for everybody with no exceptions and we need to make a point as to when are we going to start doing this and it needs to be set in black and white as of today that this is the recommendation of the beer board and this is what it is always going to be 1st offense, 2nd offense and 3rd offense and there will always be extenuating circumstances and this to him is an extenuating circumstance of having to go 3 days without even knowing about the 2nd offense and to have time to react. Board Member Thomas stated that the problem with running 2 stings so close together is we can't enforce the 2nd offense like we want to enforce it and why run the 2nd one if we are going to show leniency because they were so close together. Chairman Sutton reiterated that right now we are set up for the \$1,500 in lieu of suspension on this offense but we are waiting on a second. Attorney Cantrell stated that you would have to have a suspension and then have a fine in lieu of, but if you

want it to be paid in lieu of doing the suspension. This motion dies due to lack of a second. Board Member Thomas made a motion for a 30 day suspension. Chairman Sutton stated that he will set up another meeting in the future so we can set the penalties in stone. Vice-Mayor Johnson seconded the motion. Attorney Cantrell did a roll call vote. For: Totty, Johnson, Carroll, Thomas Against: Sutton Absent: Bissell, Hall 4 Ayes, 1 Nays, 2 Absent

Chairman Sutton stated to Mr. Dunn that his license will be suspended for 30 days. Attorney Cantrell stated to Mr. Dunn that this was a settlement conference and he can request to go before the board at the hearing, in other words he did not have to accept the settlement, you can go before the regular hearing in which all the evidence will be presented on July 11th and nothing would be done tonight it would all be carried over to the 11th and you would not be suspended until that is heard after that is heard you have the right to appeal to the chancery court and no suspension would be carried out until this is played out in chancery court. Mr. Dunn asked to be excused to go call his boss.

Case 4 – Attorney Cantrell stated that case #4 is Spinners Pizza. Mr. Kelly approached the podium and Attorney Cantrell asked him his name and he stated Tom Kelly. Attorney Cantrell asked if he was the holder of the permit and Mr. Kelly stated yes sir. Attorney Cantrell asked Mr. Kelly if he was a member of the responsible vendors and Mr. Kelly stated he was not. Attorney Cantrell asked if he had an attorney and Mr. Kelly stated that he did not. Attorney Cantrell read the charges to Mr. Kelly and stated that this was his 1st offense and asked what the wishes of the board were. Vice-Mayor Johnson asked Mr. Kelly if the employee was still an employee. Mr. Kelly stated that he suspended her and then he received the paperwork from the officer and they went over it with her and she is a very good employee and he did hire her back and they are in the process that when Fairview Shell gets certified through the ABC board that we have a meeting in our restaurant for all of our employees to have a class but she is still an employee and she was suspended for 3 weeks. Chairman Sutton made a motion to refer back to case #1 with the same penalty, \$500 fine, a 10 days suspension, if it is paid in 7 days the suspension will be withdrawn upon payment. Vice-Mayor Johnson seconded. City Attorney did a roll call vote. For: Sutton, Totty, Johnson, Carroll, Thomas Absent: Bissell, Hall 5 Ayes, No Nays, 2 Absent

Mr. Kelly accepted the charges and signed the form accepting the charges.

Case 5 – Attorney Cantrell stated that case #5 is Manjula, Inc. Likki Manjula respondent. Mr. Manjula approached the podium. Attorney Cantrell stated to Mr. Manjula that it was his understanding that Pamela Marie Coulter exercised her right to have this presented to a grand jury and her court date is set for August 30, 2013 and that this board cannot consider this until that court proceeding plays out. Attorney Cantrell stated that what he is going to do so that it will be in the record is he is going to read the charges and ask the board to accept the charges and then suspend any further proceeding until her court proceeding is terminated by some manner, either by trial or plea bargain or something because we can't hear this until her legal case is played out. Attorney Cantrell read the charges and stated on the disposition, the offer he requested that the board acknowledge the charges were read and any further proceedings be suspended until after Pamela Marie Coulter's court proceedings are terminated. Vice-Mayor Johnson made that a motion. Chairman Sutton seconded. Attorney Cantrell did a roll call vote. For:

Sutton, Totty, Johnson, Carroll, Thomas Absent: Bissell, Hall 5 Ayes, No Nays, 2 Absent

Attorney Cantrell stated to Mr. Manjula that we will advise you when to come back, you will be sent a letter. Mr. Manjula signed the statement that he was here. Vice-Mayor Johnson asked if this was his second offense and Attorney Cantrell stated that it will be treated as his 1st offense.

Case 6 – Attorney Cantrell stated that case # 6 is Anthony Vincent, Fairview Shell. Mr. Vincent approached the podium. Attorney Cantrell asked if he was Anthony Vincent and he stated yes. Attorney Cantrell asked Mr. Vincent if he was a responsible vendor and he stated that he was not. Attorney Cantrell asked Mr. Vincent if he had an attorney and he stated he did not. Attorney Cantrell read the charges to Mr. Vincent and asked what the wishes of the board were. Chairman Sutton stated that his recommendation would be the same as in case 1 and 4 since it is officially his first offense, \$500 fine, a 10 days suspension, if it is paid in 7 days the suspension will be withdrawn upon payment. Vice-Mayor Johnson asked Mr. Vincent what was the status of the employee, Mr. Vincent stated that he was right behind him and as part of his punishment is to be here with him today and he recommended to the board to do this in the future, to present themselves with the permit holder he feels this is something everybody needs to experience and it is hard to train that in the classroom. Vice-Mayor Johnson stated that Mr. Kelly stated that Mr. Vincent was going to have some classes for both businesses and Mr. Vincent stated that that was correct and that it is sanctioned by ABC but Top Shelf is the one he is certified through, their program is for off premise and Mr. Kelly has an on premise permit and Top Shelf stated that since he only sells beer it would be up to the local beer board to determine whether or not Mr. Kelly could take his class. Board Member Thomas asked why this is considered his 1st offense. Attorney Cantrell stated that there are two things, the first thing there was a fine and a suspended sentence but the ordinance and the state statute says that upon payment of the fine the suspension will be deemed withdrawn and we don't have any choice with that, our ordinance parrots the state ordinance and he paid the fine so that was deemed withdrawn. The second thing is it said suspended for 6 months, his second citation was within that 6 months but a citation is not sustained by this board of a conviction so by the time that they got to this board, it was outside the 6 months. Mr. Thomas asked if we could have the meetings quicker, Attorney Cantrell stated that you have two things that happen the people who do the selling are cited into municipal court and that we do not have any control over, when that is over you can schedule this board as soon as possible but you have to send out notice in time to satisfy due process to get them in here and the mail will handle it only so quickly, the statute says you must notify them by registered mail as to when you are going to have your hearing so what we need to do on the sentences is you either suspend them or you have a suspension and a fine in lieu of because you can't do both and if they go to the grand jury it could be up to three years before they get around to it. Chairman Sutton explained that the reason his 1st offense was more than \$500 was because he was the owner and the one who sold the beer so his fine was \$750. Mr. Thomas stated that he feels the fine should be more because the offense occurred before the six months was up and we just didn't get around to having the hearing until now. Commissioner Carroll stated that she agreed but the board has already charged the other cases tonight that were 1st offense only \$500. Chairman Sutton stated that we need to be consistent and since we charged the other 1st offense charges \$500 and technically this is his 1st offense then we should charge him \$500. Attorney Cantrell did a roll

call vote. For: Sutton, Totty, Johnson, Carroll, Thomas Absent: Bissell, Hall 5 Ayes, No Nays, 2 Absent

City Recorded asked Mr. Vincent if he accepted the charges and he stated he did and he signed the statement accepting the charges.

Mayor Totty stated that this particular process, the particular ordinance has never been at this junction and she wanted to let each one know that this is not something that we've taken a stand in the past, not to her knowledge of 28 years of living in Fairview, so it is looking as if there is movement of understanding and if confusion is on her face she wants to state that this is the first time she has been here, the first time that the actual reading of the ordinance has been put forth to a business owner and as you have heard my commissioners to my left the understanding of what was put into action didn't actually turn out and she will take fault for that but at this point she felt the need to say that because this is not confusion on our part it is just that it is the first time we have been here to walk through it with the consumers, with the public, with our children and with the businesses and she appreciates everyone's patients.

Chairman Sutton called the meeting back to case 3. Mr. Dunn with Pilot Travel Centers, LLC approached the podium and stated that he was told to go ahead and accept the 30 days suspension and asked when that will be effective. Vice-Mayor Johnson made a motion that the 30 days suspension go in effect on June 17th at midnight. Chairman Sutton seconded. Attorney Cantrell did a roll call vote. For: Sutton, Totty, Johnson, Carroll, Thomas Absent: Bissell, Hall 5 Ayes, No Nays, 2 Absent

Mr. Dunn signed the statement accepting the 30 days suspension.

Attorney Cantrell stated that concludes the docket of cases.

5. Chairman Sutton stated that he would like to set up a workshop for July 11th at 6:00 p.m. and requested with the City Manager to have someone there to post the minutes. Attorney Cantrell stated that he would like to bring the new ordinance.
6. Chairman Sutton called for adjournment. Vice-Mayor made a motion to adjourn. Mayor Totty seconded. Meeting was adjourned at 7:20 p.m.

Theresa Porter
City Recorder