

OFFICE OF THE DIRECTOR OF EXCISE AND LICENSES CITY AND COUNTY OF DENVER,
STATE OF COLORADO

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

IN THE MATTER OF THE APPLICATION OF COMPTON-ENSING, INC., DOING BUSINESS AS ANNIE'S CAFÉ, TO GRANT A MODIFICATION OF THE PREMISES FOR THE EXISTING HOTEL AND RESTAURANT LIQUOR LICENSE FOR THE PREMISES KNOWN AND DESIGNATED AS 3100 EAST COLFAX AVENUE, DENVER, COLORADO

Pursuant to prior written notice, this hearing was held at the Denver Department of Excise and Licenses, 201 West Colfax Avenue, Department 206, Denver, Colorado. This public hearing was held on January 30, 2015 at 9:00 AM, pursuant to the request filed by Compton-Ensing, Inc., a closely held Colorado corporation. The hearing was set to determine the needs and desires of the designated area for the modification of premises of the existing hotel and restaurant liquor license for the premises known and designated as 3100 East Colfax Avenue, Denver, Colorado.

APPEARANCES The Applicant was represented by and appeared through the person of Marguerite Anderson, the President and sole stockholder of the corporate Applicant. The licensing authority was represented by Colleen Morey, Assistant City Attorney. There were zero protesters present at the hearing, and no one testified in opposition to the requested modification.

AGENCY FILE At the start of the hearing, all parties were advised that the documents in the agency file regarding this application are not automatically reviewed or considered in reaching a recommended decision in this matter, and if any party wanted a particular document to be reviewed and considered in reaching a recommended decision, then a specific request to do so would need to be made during the hearing. No one made a request to have the Hearing Officer review or consider any additional documents from the file.

After reviewing the testimony and exhibits admitted into evidence, some of which is summarized below, and applying the existing law, the following findings of fact, conclusions of law, and recommended decision are made:

1. Pursuant to Denver Revised Municipal Code, the following neighborhood organizations, registered with the Planning Office, were sent notice of the public hearing, in addition to Councilperson Jeanne Robb:

a. Denver Neighborhood Association, Inc. b.
Inter-Neighborhood Cooperation c. Bluebird
Business Improvement District d. Capitol Hill
United Neighborhoods, Inc. e. City Park Friends
and Neighbors f. Colfax on the Hill, Inc. g.
Congress Park Neighbors, Inc. h. Points Historical
Redevelopment Corp. i. South City Park
Neighborhood Association

LICENSING AUTHORITY STIPULATED EXHIBITS 2. City's Exhibit C-1, a photocopy of the Hearing Notice, with handwritten notations showing the dates that an Investigator for the Department of Excise and Licenses checked the proposed premises and found that the premises were properly posted, was admitted into evidence by stipulation. The date the premises were first observed to be properly posted was January 9, 2015, which is more than the 20 days continuous notice required by Policies and Procedures of the Department.

3. City's Exhibit C-2, a map of the area designated to be most affected by the requested modification to the existing licensed premises, was admitted into evidence by stipulation.

4. City's Exhibit C-3, a computer printout of a list of all the alcohol and liquor licensed outlets in the designated area licensed by the Denver Department of Excises and Licenses, was amended during the hearing, and as amended, was admitted into evidence by stipulation. The Exhibit was amended to include the Applicant as an existing hotel and restaurant liquor licensed outlet in the designated area. As amended, the Exhibit listed a total of 25 alcohol and liquor licensed outlets in the designated area, as follows:

a. 17 hotel and restaurant licenses b. 2 tavern licenses c. 3 retail liquor store
liquor licenses d. 1 3.2% fermented malt beverage [3.2% beer] off-premises
license e. 1 beer and wine license f. 1 liquor tasting license

APPLICANT HEARING POSTING AFFIDAVIT 5. Applicant's Exhibit A-1, a Hearing Posting Affidavit, was accepted by stipulation. The Affidavit was signed and notarized on the date of the hearing, and indicated that the proposed premises were posted with notice of this public hearing as required by the rules and regulations promulgated pursuant to the Denver Revised Municipal Code.

SHAREHOLDER RESOLUTION 6. Applicant's Exhibit A-2, a shareholder Resolution, was accepted by stipulation. The Resolution, signed by the sole shareholder and notarized on the date of the hearing, recited that the Applicant is a closely held private entity, as defined in Section 13-1-127, C.R.S., and resolved that Marguerite Anderson is authorized to represent and appear on behalf of the Applicant at the public hearing.

APPLICANT PETITIONS 7. Applicant's Exhibits A-5 through A-9, five sets of petitions circulated in the designated area, were offered into evidence at the public hearing. Specifically, Marla Reeder testified regarding Exhibit A- 5, Dianne Williams testified regarding Exhibit A-6, Marguerite Anderson testified regarding Exhibit A-7, Crystal Lindfors testified regarding Exhibit A-8, and Mary Meggitt testified regarding Exhibit A-9.

Each witness testified that she is over the age of twenty-one years, that she waited at least two days after the date of posting before circulating her petition, that she witnessed each signature on her petition, that each signature includes the address of the signatory and date signed, that each signatory is over the age of twenty-one years, that each signatory is an adult resident, manager of a business, or owner of property in the designated area, that each signatory read the petition before signing, that it is her personal opinion that each signatory understood the English language and understood the petition, that it is her personal opinion that each signatory signed voluntarily and without any duress, that no one was offered or received any thing of value for signing the petition, and that her petition included a warning page identifying the purpose of the petition and the qualifications to be able to sign the petition, and a copy of a map showing an outline of the designated area. The petitions (Exhibits A-5 to A-9) were admitted at the hearing without objection. As reported at the hearing, the petitions contained an aggregate total of 184 signatures of adult residents and owners or managers of businesses in the designated area in support of the requested modification of premises. However, an initial review of all the petitions by the Hearing Officer indicated the signatures of a total of nine people who listed an address outside the designated area. None of these signatures was considered by the Hearing Officer in reaching a Recommended Decision in this matter.

ADDITIONAL EXHIBITS 8. Additional exhibits were introduced at the hearing, each of which was accepted without objection. The additional exhibits are as follows:

By the Applicant: Exhibit A-3: Good Neighbor Agreement, signed by the Applicant on January 28, 2015. Exhibit A-4: A letter from the Executive Director of C.H.U.N. and three e-mails from residents of the

designated area expressing support for the requested modification of premises.

APPLICANT REPRESENTATIVE TESTIMONY 9. Marguerite Anderson testified that she is the President and the 100% stockholder of the corporate Applicant. She testified that the Applicant is requesting to modify the existing licensed premises by adding an outdoor seasonal patio area, and that the requested modification of premises would not lead to any change in the existing operation of the licensed outlet. She testified that she has approximately 32 years experience managing a liquor-licensed outlet, all in the Denver area, and that during that time she has not received any citations or complaints alleging a Liquor Code violation.

She further testified that the additional of a patio area is a result of numerous requests by customers over the years. She testified that Denver has lovely weather through most of the year, and that customers want to eat outside if the weather permits. She testified that other liquor licensed outlets in the designated area have outdoor patio areas for customers, that they are often full and busy, that the addition of a patio with this outlet would be in keeping with the other outlets along Colfax Avenue, and have a positive impact on the area. She anticipates that the patio area will open for business around May 1, 2015.

She testified that that patio area will accommodate eight tables with seating for 25 people, will be located near the parking lot for the premises, and will not have any music or speakers. She also testified that the patio area will be visible to staff at all times, contain signage advising patrons that alcohol beverage cannot be removed from the premises, and be surrounded by a metal railing approximately four feet in height.

In connection with her testimony, the Applicant's representative specifically testified regarding City's Exhibit C-4, consisting of two pages, showing the floor plan of the licensed premises before and after the requested modification of the premises. At the conclusion of this testimony, the floor plan, City's Exhibit C-4 was admitted by stipulation.

WITNESS TESTIMONY - IN SUPPORT OF APPLICATION 10. Crystal Lindfors testified that she is an adult resident in the designated neighborhood. She testified that she is over twenty-one years of age, signed a petition supporting this request to modify the existing licensed premises, and has resided in the designated area approximately two years. She believes there is a neighborhood need for the requested modification to the premises of the existing hotel and restaurant liquor license and personally desires that the licensed premises be modified as requested by the Applicant.

She also testified that she has worked at the licensed premises for seventeen years. She testified that potential customers leave the premise because the outlet does not have an outside patio area for dining and having an alcohol beverage. She further testified that customers constantly ask about outdoor patio dining during the spring and summer months.

She lastly testified that if the requested modification of the hotel and restaurant liquor license is granted, she is confident that the liquor licensed outlet will continue to be lawfully operated; and she believes that the approval of the requested modification to the licensed premises will not have an adverse impact on the current operation of the premises or the public health, welfare, or safety of the designated neighborhood.

FINDINGS REGARDING CONDITIONS ON LICENSE 11. At the start of the hearing, Dona Dodson was identified as a witness who was appearing to testify on behalf of Capitol Hill United Neighborhoods, Inc. [CHUN], a registered neighborhood organization, and testify regarding the

previously referenced Exhibit A-3, the Good Neighbor Agreement.

Through oversight and inadvertence, Ms. Dodson was not called to testify during the hearing. The Good Neighbor Agreement, signed by the Applicant and representatives from CHUN and South City Park Neighborhood Association, recites that the two neighborhood organizations support the requested modification to the licensed premises, and recites that the Applicant agrees to have two of the Agreement's provisions attached as conditions to any liquor license to be issued to the Applicant.

The proposed conditions are:

1. The Applicant shall stop any music/amplified sound on the outdoor patio at 10:00 PM daily, and shall not have any live music on the outdoor patio at any time.
2. The Applicant shall not serve any food or beverages on the outdoor patio after 10:00 PM daily.

The Hearing Officer recognizes that no testimony was provided at the hearing regarding attaching these proposed conditions to the license. However, the signed Good Neighbor Agreement is some evidence that these are the requested conditions to be attached to the Applicant's license and that the Applicant does not object to having these requested conditions be attached to its license.

It would seem that the options are to accept this evidence and recommend that the requested conditions be attached to the license, or require that the hearing be re-opened to accept in person testimony on this issue and require that a new hearing date be scheduled and require that the parties appear to provide that testimony. The Hearing officer believes that would be an unwarranted and unnecessary inconvenience to the parties and witnesses, and chooses to accept the signed Good Neighbor Agreement, Exhibit A-3, as sufficient evidence both as to the language of the proposed conditions and the fact that the Applicant has agreed to have those proposed conditions attached to its license.

DUPLICATION OF TESTIMONY 12. It may be noted in this Recommended Decision that a witness may have previously signed a petition in support of the requested modification of premises sought by the Applicant. Whenever duplication of a witness' position has occurred, whether or not that duplication was specifically noted in the Recommended Decision, the Hearing Officer gave consideration only to one form of presentation of a person's position, and that consideration was given to in person testimony over signing a petition. While the record may contain or make reference to some duplication of a witness' position, there was no duplication of or increase in the consideration or weight given that witness' position in reaching a Recommended Decision in this matter.

STANDARD ADVISEMENT REGARDING FLOOR PLAN 13. As stated at the conclusion of the hearing, the Applicant was notified that even if the request for modification is approved, a new license

shall not be issued until the area to be modified is ready for occupancy with such furniture, fixtures, and equipment in place as is necessary to comply with the applicable provisions of the Colorado Liquor Code, and then only after inspection of the premises has been made by the licensing authority to determine that the Applicant has complied with the architect's drawing and the plot plan and the detailed sketch for the interior of the building submitted with the application.

The Applicant was further advised that any Recommended or Final Decision relates only to the diagram or floor plan submitted with the application, and that any changes to the proposed premises without properly notifying the Department of Excise and Licenses will result in a delay in the issuance of the requested license, and may require filing an amended floor plan or filing an application to modify the premises.

ACCORDINGLY, having considered the evidence in its entirety, it is concluded by the weight thereof that the Applicant has sustained its burden to show that there is a need for the requested modification to the licensed premises to meet the reasonable requirements of the neighborhood, and that the residents and owners and managers of businesses in the designated area desire that the requested modification to the licensed premises be granted with the inclusion of the listed conditions or restrictions, have confidence that the outlet will be lawfully operated, and believe that allowing the requested modification to the existing premises will not have an adverse effect on the health, safety, or welfare of the designated area for the Applicant known and doing business as Annie's Cafe, located at 3100 East Colfax Avenue, Denver, Colorado.

IT IS THEREFORE RECOMMENDED THAT the request to modify the licensed premises be approved, with the following conditions or restrictions imposed on the existing hotel and restaurant liquor license:

1. The Applicant shall stop any music/amplified sound on the outdoor patio at 10:00 PM daily, and shall not have any live music on the outdoor patio at any time.
2. The Applicant shall not serve any food or beverages on the outdoor patio after 10:00 PM daily.

RECOMMENDED this 5th day of February, 2015.

/s/ Kip David Barrash
Kip David Barrash
Hearing Officer

INFORMATION REGARDING OBJECTIONS AND FINAL DECISION Any party in interest may file objections to the foregoing Recommended Decision within ten (10) calendar days from the date above.

All filings shall be made by e-mail to the Director at: stacie.loucks @denvergov.org, with copies sent to: larry.stevenson @denvergov.org, john.jennings @denvergov.org, the Assistant City Attorney, and any additional party listed in the Certificate of Service.

If a party in interest does not have access to e-mail, objections shall be submitted in writing to the Director, at the Department of Excise and Licenses, 201 West Colfax Avenue, Department 206, Denver, CO 80202.

The Director of the Department of Excise and Licenses will issue a **FINAL DECISION** in this matter following review and consideration of the Recommended Decision, and if applicable, any objections.

CERTIFICATE OF SERVICE The undersigned hereby states and certifies that one true copy of the foregoing Recommended Findings, Conclusions, and Decision was sent via e-mail transmission on the date above, addressed to the following:

Stacie Loucks, Director
Department of Excise and
Licenses **stacie.loucks**
@denvergov.org

Larry Stevenson Department of
Excise and Licenses
larry.stevenson @denvergov.org

John Jennings Department of
Excise and Licenses
john.jennings @denvergov.org

Colleen Morey Assistant City
Attorney **colleen.morey**
@denvergov.org

Marguerite Anderson Annie's
Café
anniescafeandbar@yahoo.co
m

Capitol Hill United Neighborhoods, Inc.
nicoleanderson@chundenver.org

South City Park Neighborhood
Association **southcitypark@gmail.com**