

**LOCAL LICENSING AUTHORITY  
949 EAST 2ND AVENUE  
01/16/2018  
2:00 PM**

**AGENDA**

1. Call to Order
2. Roll Call
3. Approval of Minutes
  - 3.1. Minutes of December 18, 2017
4. New Business
  - 4.1. Liquor
    - 4.1.1. Discussion and Possible Action on Motion to Continue the Show Cause Hearing for Rack & Roll, Inc., d/b/a Pongas Rack & Roll, 121 W. 8th Street, to February 20, 2018 DLLA Meeting.
5. Reports
  - 5.1. The next meeting will be held on Tuesday, February 20, 2018, 2:00 PM.
6. Addendum Items
7. Adjournment

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**Ronald P. LeBlanc, Chairman**

PROCEEDINGS OF THE  
DURANGO LOCAL LICENSING AUTHORITY  
REGULAR MEETING  
December 18, 2017

- Roll Call Durango Local Licensing Authority Chair Ron LeBlanc called a regular meeting of the Durango Local Licensing Authority (DLLA) to order at 2:00 p.m. Upon roll call, Chair LeBlanc, Mr. Colgan, and Mr. Sluis were present. Staff present included City Attorney Dirk Nelson, Durango Police Department Chief Kamran Afzal, and Durango Police Department Commander Robert Brammer.
- Approval of Minutes, July 18, 2017 meeting Hearing no objection to the minutes of the Durango Local Licensing Authority regular meeting of July 18, 2017, Mr. Colgan made a motion to approve as submitted and circulated. Mr. Sluis seconded the motion, and the motion carried unanimously.
- Probable Cause Hearing, Rack & Roll, Inc., d/b/a Pongas Rack & Roll, 121 W. 8<sup>th</sup> Street Chair LeBlanc introduced the agenda item concerning review and consideration of evidence and information to be provided to the DLLA Under Rule 17 of the Rules of Procedure for the DLLA, the City Code, state law and state regulations to determine whether probable cause exists to find that there has been a violation of the terms of the license by Rack & Roll, Inc., d/b/a Pongas Rack & Roll, the Licensee of the premises at 121 W. 8<sup>th</sup> Street, Durango, Colorado. In the event the DLLA determines that probable cause exists to find that the Licensee has violated the terms of the License, then the DLLA shall issue a Notice of Hearing and Show Cause Order to the Licensee directing the Licensee to show cause why the License should not be suspended or revoked by the DLLA.
- Chair LeBlanc called upon Commander Robert Brammer, of the Durango Police Department, to offer testimony. Chair LeBlanc swore Commander Brammer in prior to his offering testimony before the Authority.
- Counsel Nelson noted for the Authority that the intent of the meeting was not to be a hearing but rather an offering of evidence and also wished to note for the record that both licensees and their Attorney were present.
- Robert Brammer introduced himself as a Commander with the Durango Police Department. He was asked by Counsel Dirk Nelson to provide his documentation with regards to the interactions between the Durango Police Department and Pongas Rack & Roll.
- Commander Brammer stated the timeline for his evidence is from March 2017 to December 4, 2017. (March 2017 reflects when the prior owner transferred the liquor license to the current owner.) During that timeframe, the Police

Department had a total of 109 total incidences associated with Pongas. The report was broken down into a synopsis by pulling data from the records management system that reflected 92 calls for service which would be calls the officers responded to, or self-initiated activities that did not generate a formal report.

Of the 109 incidences, a clustering by type of call was generated reflecting:

- a) 34-assaults, or disturbance calls. A portion, the Durango Police Department was unable to validate due to parties having dispersed however some were directly related back to Pongas;
- b) 4-sexual assaults that could be attributed back to Pongas;
- c) 23-over intoxicated calls, with people being passed out or inebriated to the point where either law enforcement or EMS intervened in the situation;
- d) 4-under age serving of alcohol.

Commander Brammer provided the following incident synopsis (from March 3, 2017 through December 4, 2017), and provides insight into the conduct of the establishment and clientele it attracts.

- Warrant attempt.
- An incident with a bouncer and a patron.
- Intoxicated subject passed out on the sidewalk.
- Subject outside the bar armed with a knife.
- Stolen cell phone from bar interior.
- Hit and Run, driver had had been a patron.
- Intoxicated [individual] on Narrow Gauge.
- Disturbance in front of bar, no contacts.
- Intoxicated male in front of bar requested Detox.
- Disturbance in front of bar, no contacts.
- Reports of underage patrons, no contacts.
- Warrant attempt, no contact.
- Disturbance, no contact.
- Physical disturbance, females had been in the bar.
- Trespass, no information.
- Civil issue with bouncer taking legitimate ID from a patron.
- Bouncer notified police of problems. Multiple intoxicated people fighting after leaving the bar at closing.
- Victim from assault at the bar earlier needed further assistance.
- Male with a gun, there was no validity to that one.
- Reporting Party called because a known person who causes trouble arrived at the bar.
- Male in the bar began a disturbance then caused property damage. Bouncer called the police.
- A report the bar owner drinking and driving after bar closed. May have a child in the car at times.

- Officers were notified by the bouncer of a problem male. The male had been in the bar drinking then fighting.
- Stolen wallet and cell phone.
- Male drinking in the bar highly intoxicated refused to leave.
- Intoxicated male outside the bar, had been drinking inside.
- Two highly intoxicated females refusing to leave.
- Male called in that his car was stolen. He had been drinking at the bar and forgot where he parked his car.
- Several males who were drinking at the bar began heckling the police and were arrested for disorderly conduct.
- Disturbance, no contacts.
- Multiple fights reported both inside and outside of the bar. Subjects left area prior to law enforcement response.
- Disturbance, no contacts.
- Intoxicated male evicted from the bar, continues to return.
- Same subject.
- A male with blood alcohol content of .247 was evicted from the bar and began a fight with the bouncer.
- A 20-year-old female was intoxicated in the bar and fell down stairs.
- Intoxicated female was attacking random people.
- Intoxicated report, no contacts.
- Report of multiple fights, resulted in warrant arrests.
- Report of fights, no contacts.
- Report of intoxicated male in the bar, refused to leave. He was gone on arrival of the police.
- Report of sex assault. Victim refused to move forward, so no details on this case, she had been drinking at the bar earlier.
- Another stolen cell phone.
- Disturbance, no contacts.
- Extremely intoxicated male, medical call.
- Underage male was found in the bar drinking. Bar owner was contacted, he was intoxicated (the bar owner was) and said it was no big deal to have people in the bars without IDs.
- Intoxicated call, no contacts.
- Disturbance call originated inside the bar, participants contacted outside.
- Stolen ID.
- Officers notified by a patrol of an aggressive male in the bar. When they attempted contact, the male he ran into the alley and urinated on the wall when the officers tried to talk to him. The male then attempted to go back inside the bar.
- Officers observed a physical fight in front of the bar. Intoxicated male then attempted to fight the police.
- Disturbance, no contacts.

- Disorderly outside of the bar which originated inside the bar then spilled over.
- Intoxicated person.
- Intoxicated male passed out in front of bar.
- Patron attempted to fight several people by use of a screw driver.
- Several patrons left the bar intoxicated, assaulted several people and drove away.
- Suspicious activity, no information.
- Warrant arrest
- Officers observed a very intoxicated female. The officers told the bartender at Pongas to not serve her anymore. It was discovered they continued to serve her after this request in belief the female had a designated driver. The intoxicated female was later arrested for DUI.
- Warrant arrest.
- Intoxicated subject passed out on sidewalk.
- Intoxicated female passed out on sidewalk.
- Two females passed out on the bench and sidewalk in front of the bar. The DJ stated both had been in the bar earlier. The bar staff continued to serve them after they were visibly intoxicated and after they passed out they refused to call for aid. Their Blood Alcohol levels were .294 and .250 and a third female, that was associated with a male, was .212. They were all either taken to detox or jail because of 7 other related incidents on the same evening (which include 34707, 34710, 34713, 34714, 34715, and 34718). The bar owner was also contacted during these incidents and was so intoxicated he required the assistance of his employee to stand. He also urinated in his pants as he spoke to the officers.
- Intoxicated, no details.
- Intoxicated, no details.
- Intoxicated, no details.
- Intoxicated female was removed from the bar. She then went to her car and continued drinking.

The following are Police Officer narratives that include a little more specific detail concerning referenced incidents:

- In April, suspects were fighting outside the bar after they had an altercation that started in the bar. Suspect was arrested with Blood Alcohol level of .221.
- In April, a sex assault happened at Fort Lewis College. Victim had been drinking at Pongas, pre-drunk prior to going to Pongas but continued to drink at Pongas, and had small blackouts throughout the evening, until ultimately she became a victim.
- Obscene conduct in the alley. Pongas bathrooms were full.
- Obscene conduct in the alley. Individual had been drinking in Pongas, was outside smoking and didn't want to go back in to use the restroom.

- Domestic [disturbance] started in the bar. Male punched another male while leaving and was arrested at Moe's [Starlight Lounge].
- Sex assault, individual had been drinking at Pongas.
- Officers observed a disturbance at Pongas. Upon investigation the bouncer had refused entry to a male and female with fake ID's. A disturbance ensued. No notification was made to police.
- Domestic violence. Male had been at Pongas drinking. When his wife picked him up from the bar, he was extremely intoxicated and could not stand. Fight ensued.
- Sex assault. Victim had been at Pongas and blacked out prior to leaving. Suspect believes she was drugged at the bar, but she had been at several bars over the evening.

Commander Brammer explained the above summary captures incidences through December 4, 2017, however there were several incidents this past weekend (December 16-17, 2017) as well.

Chair LeBlanc advised Commander Brammer the Authority may have some questions for him. He then asked Commander Brammer how long he has been with the Durango Police Department, and how long he had been a law enforcement officer.

Commander Brammer responded he has been with DPD since 2005 and a law enforcement officer since 1998.

Chair Blanc inquired of Commander Brammer if other liquor establishments in City limits experience these types and numbers of incidents, and would the just presented summary be considered typical for the City of Durango.

Commander Brammer reported based on Durango Police Department experience the frequency of calls concerning Pongas does seem excessive as they do not respond as frequently to other liquor establishments as they do to Pongas.

Chair LeBlanc requested clarification of a term "Obscene conduct". Commander Brammer said it is used when the PD finds some one "exposed" such as urinating.

Mr. Colgan asked if there was a similar history of police calls with the previous owner of Pongas. Commander Brammer indicated that in the past, the DPD frequently responded to Pongas. Commander Brammer explained the PD had a similar history with the prior owner and have the capability to run reports for comparison purposes if requested.

Chair LeBlanc asked Commander Brammer if it is typical for the owner to be on premises and he responded a few Tavern owners are so it's not unusual to

have interactions with bar owners in the past.

Chair LeBlanc also asked Commander Brammer if it is typical for the owner to be consuming alcohol and he responded that maybe to a minute scale but not to excess. Owners are businessmen so that is what you see.

Mr. Sluis asked Commander Brammer if this behavior sets the tone for the business or are there other factors such as location. Commander Brammer replied that his response is speculative and his opinion; he stated he believes it does set the tone.

Mr. Sluis also inquired if there was anything else unique to Pongas related to other bars downtown. Commander Brammer stated location wise, it is a little off the beaten path from Main being on the West 100 block; it does have another bar next door to it, which is Joel's, the alley is right there and there are dark spots back in those areas, so a lot of times you are not contacting specific premise issues there is a lot of peripheral issues. That in itself causes a lot of problems.

Chair LeBlanc inquired of Counsel Nelson if questioning Commander Brammer should continue.

Counsel Nelson explained the matter at hand is for the DLLA to make a determination of whether or not there is sufficient evidence of Probable Cause to set this matter for a Show Cause Hearing at which time Durango PD officers would testify, the licensee would have an opportunity to testify, cross examine the officers, etc., and determine if Probable Cause exists to find that the licensee may have violated the terms of the license and the Liquor Code concerning overserving and underage serving of Pongas patrons. It is up to the DLLA to determine whether or not Probable Cause exists to set it for a Hearing.

Commander Brammer noted the information given today provides both a specific and broader picture of the overall conduct of the establishment which is problematic. The perspective in the matter is not only the number of incidences but a pattern of non-compliance with the Liquor Code.

Mr. Sluis asked if individual incidences of overserving come before the DLLA.

Counsel Nelson stated that individual violations don't typically come before the Board, but when staff or police see a pattern, it is appropriate to bring it to the DLLA for licensing action.

Counsel Nelson indicated the initial concerns triggering a report to staff involved a report from the DPD concerning Pongas and a couple of nights with multiple incidents involving two fairly young females with very high blood

alcohol levels which turned into a health and safety concern and it was determined appropriate to bring licensing concerns before the DLLA.

Mr. Colgan asked if this goes to a Hearing is there a particular ordinance that supports the Hearing.

Counsel Nelson clarified two primary concerns involve Liquor Code violations; serving underage patrons and over serving patrons. If the DLLA finds Probable Cause exists that there were violations of the liquor code, and recommends the matter be set for a Show Cause Hearing, then a Notice will be issued that meets the provisions of the code. It would be a full due-process Hearing.

Chair LeBlanc, noted the primary purpose is to determine if there is evidence of Probable Cause contributing to creating a nuisance downtown and putting members of the public in danger by the way a licensed liquor establishment is conducting its business. By review of the prior incidents summary, overserving seems to be causing other issues as summarized. Underage serving is a concern and there is a question if Pongas staff have safe serving training.

Mr. Colgan asked if this type of behavior is typical downtown. Commander Brammer responded these types of issues can occur, but the primary concern is the number of issues at this business.

Mr. Colgan made a motion that the Local Licensing Authority hold a Show Cause Hearing involving Rack & Roll Inc., d/b/a Pongas Rack Roll to determine the question whether or not underage serving occurred and over serving of patrons occurred, Mr. Sluis seconded the motion, motion carried unanimously.

The proposed Show Cause Hearing will be held at the January 16, 2018 meeting.

There being no further business, the meeting was adjourned at 2:30 pm.

Reports

The next meeting will be held, Tuesday, January 16, 2018 at 2:00 p.m

Addendum Items

None

Adjournment

There being no further business to come before the Authority, the meeting adjourned at 2:31 p.m.

APPROVED:

Local Licensing Authority

December 18, 2017

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Ronald P. LeBlanc, Chairman

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Kathy Schneyer, Records & Licensing