



Meeting Minutes
Mayor and City Council Special Called

Mayor Jere Wood
Council Member Nancy Diamond
Council Member Rich Dippolito
Council Member Kent Igleheart
Council Member Jerry Orleans
Council Member Betty Price
Council Member Becky Wynn

Monday, August 30, 2010

To be held immediately after the Open Forum Meeting in
Council Chambers

REGULAR AGENDA

Welcome – Mayor Jere Wood called the meeting to order and welcomed everyone present.

Present: 6 - Mayor Jere Wood, Council Member Rich Dippolito, Council Member Kent Igleheart, Council Member Jerry Orleans, Council Member Betty Price, and Council Member Becky Wynn

Absent: 1 - Council Member Nancy Diamond

Staff Present: Deputy City Administrator Michael Fischer; City Attorney David Davidson; Assistant City Attorney Bob Hulse; Police Chief Ed Williams; Sgt. Cameron Roe; Deputy Fire Chief Ricky Burnette; Environmental/Public Works Director Stuart Moring; Transportation Director Steve Acenbrak; Recreation, Parks, Historic and Cultural Affairs Director Joe Glover; Community Development Director Alice Wakefield; Finance Director Julia Luke; Strategic Planning and Budgeting Director Keith Lee; Community Relations Manager Julie Brechbill; Deputy City Clerk Betsy Branch.

Mayor's Report

1. **Approval of appointment to the Cultural Arts Board.**

Mayor Wood asked for a motion to approve the appointment of Nancy Tolbert-Yilmaz to the Cultural Arts Board.

A motion was made by Council Member Betty Price, seconded by Council Member Kent Igleheart, for the approval of the nomination of Nancy Tolbert Yilmaz to the Cultural Arts Board. The motion carried by the following vote:

In Favor: 5

City Attorney's Report

2. **Public Hearing to consider to consider revocation or**

suspension of the alcoholic beverage license of Mostafa Mirzakhanlou, El Andariego, 100 Norcross Street, Roswell, GA.

Assistant City Attorney Bob Hulsey stated the purpose of the hearing is to consider whether the evidence will justify the revocation or suspension of the alcohol license of Mostafa Mirzakhanlou and El Andariego. Mr. Hulsey explained there are three charges: The first charge being the employee José Carios served alcohol to a person under the age of 21, undercover agent Eslava. Ms. Eslava is a college student at the University of Georgia. She was here ready to testify but had to leave at 9:00 p.m. The attorney for El Andariego, Jeffrey P. Rothenburg, representing the licensee, stipulated on the first count there was a sale of alcohol to a minor, which will be stipulated for the record; Mr. Rothenburg can add anything to that charge. The second charge being the licensee did violate Chapter 3, Section 3.5.8A, Article 3.5 of the Code of Ordinances of the City of Roswell, by failing to have alcoholic beverages delivered to the license premises in the original container and by conveyance owned and operated by a licensed wholesale dealer permitted by the City of Roswell to make deliveries. The third charge being the licensee did violate Chapter 3, Section 3.7.3A 1-4; this section requires the licensed premises have kitchen facilities to adequately prepare and serve meals on the premises for customers. The allegation is El Andariego did not have kitchen facilities preparing and serving meals on the premises during the investigation period. These charges stem from a police investigation on the night of July 30, 2010. The investigation shows less than 50% of the revenues are derived from food. The Ordinance the Council has insisted upon is that to have an alcohol license it must be a restaurant, must serve food, and that food service and sales must be more than 51% of the total revenues. Pursuant to Section 3.3.2A of the Code of Ordinances, Council has the authority to either suspend or revoke the license. This is a civil proceeding, it is not a criminal proceeding, there are separate criminal proceedings pending in the municipal court that has no relevance to this proceeding tonight. The code authorizes Council to suspend or revoke in its discretion the license for any violation of the Alcoholic Code. Mr. Hulsey emphasized the standard of proof or how Council measures what is presented tonight is the civil standard, it is preponderance of the evidence; that is if what the city presents slightly weighs more than a violation not occurring, then Council would find in the city's favor. If the licensee is dissatisfied with Council's action in any way, the licensee has the opportunity to file an appeal to Superior Court by way of search of writ of certiorari to the Superior Court.

Mayor Wood asked for an opening from the defense so Council can have a more thorough knowledge of the case.

Opening Statement: Mr. Rothenburg, attorney, stated he represents Mostafa Mirzakhanlou and El Andariego. He stated El Andariego is the name of the business; the corporation, NSF Food Inc., is not named in this action. The business opened in 2004, and has operated 5 to 6 years continuously, without any violations. At the time of the first charge for selling to an under aged person, his client was visiting his mother in Iran and has no personal knowledge of what transpired. Mr. Rothenburg stated his understanding, Ms. Eslava was here, and could prove she was under the age of 21 and would testify that she did receive a beer; his client is not contesting that charge. It is not the policy of El Andariego to serve alcohol to under aged people, and if that occurred, it was a mistake. The second charge, regarding the purchases of alcohol for the business, his client has all the receipts to show that all alcohol is purchased from two different wholesalers who are duly licensed. The evidence will show that on some occasions a customer will ask for something those particular wholesalers do not carry and as a favor to the customer, a special bottle of the requested item would be purchased, and would last several months. His client was

unaware that was a violation of the Ordinance, but 99.9% of all alcohol was purchased from the wholesalers for the past 5-6 years. The third charge, regarding a non-fully operating kitchen, Mr. Rothenburg stated his client has always had a fully operating kitchen and has food. His client leases the property. The landlord, in April of this year, decided to renovate the property, including the installation of a gas line and additional kitchen equipment. For the past 5 to 6 years, the Fire Department and "food department" have inspected the business; El Andariego has always passed these inspections. This year when the Fire Department saw the fryer with no hood, they prohibited the sale of food. This caused a situation where somebody has a license to sale alcohol, but is prohibited from selling food since April 2010. Mr. Rothenburg stated his client asks Council for a suspension.

Mr. Hulseley called Sgt. Cameron Roe to the stand and swore him in. Sgt. Roe stated his name as Cameron Roe, a Detective Sgt. with the Roswell Police Department. Mr. Hulseley asked Sgt. Roe what he learned from the licensee regarding where he obtains his alcohol. Sgt. Roe stated during an interview the licensee stated he purchases the alcohol from a liquor store on Buford Highway. Mr. Hulseley asked if his understanding was the licensee purchased all his liquor from that location. Mr. Roe replied yes. Mr. Hulseley asked Sgt. Roe if he had been to El Andariego on more than one occasion, and asked if he had pictures to show Council regarding his visit on April 5, 2010. Sgt. Roe replied yes and showed Council pictures. Sgt. Roe explained the pictures, which showed very few customers at 10:00 p.m., a man who introduced himself as the manager, and a refrigerator that had no content in it, another freestanding refrigerator that had some orange juice, and food being cooked in a microwave oven, a stovetop and gas line that had been added, another refrigerator containing only limes, there were only paper plates and styrofoam containers, refrigerators in the main portion of the bar area completely stocked up with beer. Mr. Hulseley asked if there were any evidence of menus. Sgt. Roe replied they saw none. Mr. Hulseley asked during his revisit on July 30, 2010 what he observed. Sgt. Roe replied the same thing. Mr. Hulseley asked if anything had changed. Sgt. Roe replied a flattop and overhead vent hood had been completed. Mr. Hulseley asked based upon Sgt. Roe's personal observations at El Andariego, was it operating as a restaurant. Sgt. Roe replied not even close, the vent hood was not operational. Mr. Hulseley asked based upon Sgt. Roe's observation was El Andariego capable of selling enough food to comprise more than 50% of its sales. Sgt. Roe replied no. Mr. Hulseley asked if the licensee said how alcohol was delivered. Sgt. Roe replied the licensee told him they go to the Buford Highway Store and bring it to the store. Mr. Hulseley asked if there was anything else Sgt. Roe would like to tell Council regarding the lack of food service he found. Sgt. Roe replied there was the lack of seeing any food service, compared to the amount of alcohol that goes through there. The refrigeration on the inside is not there, the small microwave is the size someone puts on a desk. The photographs were taken at 10:00 p.m. on July 30, 2010, and after looking at photographs taken further back, which are not here, he observed the same thing. There were no menus, and in their presence inside El Andariego, there was no food seen. Undercover officers that have been in there never saw any food served on the tables during regular business hours or even later into the night. Further, through some photographs, the food that was observed being served was contained in small lunch bag size potato chips, Fritos and Cheetos, that sort of thing.

Mr. Rothenburg asked Sgt. Roe about his testimony about where the alcohol was purchased, was he ever shown any of the invoices from either General Wholesale Company or Atlanta Beverage Company. Sgt. Roe replied he received the documents from those suppliers for the past 24 months. Mr. Rothenburg asked if he is aware that alcohol is delivered to El Andariego by those wholesalers. Sgt. Roe replied yes, but on a minimal amount according to their documents, the wholesalers provided. Mr. Rothenburg asked Sgt. Roe if he had ever seen the invoices he was

holding. Sgt. Roe replied no, he has seen an overall spreadsheet from the distributors themselves. Mr. Rothenburg asked how much alcohol was delivered at El Andariego during the past year from the wholesalers. Sgt. Roe replied, from General Wholesale for the past 24 months, \$24,000 worth of alcohol. This generally refers to beer, because they only sale certain products. El Andariego did not receive their Georgia liquor license until February 2010, so they did not have a license in January, and the numbers do not support the numbers provided of food being sold to the amount of alcohol being sold on a 49 to 51% scale. Mr. Rothenburg asked in regards to Sgt. Roe's testimony that the alcohol for the business was being purchased at Buford Highway, his implication was that all of it was being purchased there, but in fact, 99% seems to have been purchased through the wholesalers. Sgt. Roe replied not 99%, he was going by what the licensee told him, which was they got beer from a liquor store on Buford Highway. Mr. Rothenburg asked if he knew how much beer he was referring too. Sgt. Roe replied he has personally seen truckload after truckload of beer being wheeled into El Andariego on handcarts out of the back of pick-up trucks and vans at the business. Mr. Rothenburg asked when Sgt. Roe was there, did he ever see patrons ordering food. Sgt. Roe replied no, he never saw food on the tables, or food in the kitchen being available for service, except for small vending machine size containers of potato chips. Mr. Rothenburg asked Sgt. Roe how many days he was personally at the establishment. Sgt. Roe replied through the several times of the inspections, plus not him physically, but his employees. Mr. Rothenburg asked what can he testify of his own knowledge. Sgt. Roe replied he can testify what his police officers tell him. When his employees were inside they never saw food on tables, it was never available. Mr. Rothenburg rejected to that as being hear say. Mr. Rothenburg asked Sgt. Roe what time of day or night was it was when he was at El Andariego. Sgt. Roe replied it was always during business hours. Mr. Rothenburg asked ever at night. Sgt. Roe replied El Andariego is only opened at night. Mr. Rothenburg asked Sgt. Roe what time and how long he stayed at El Andariego. Sgt. Roe replied they open at 7 p.m. until 4 a.m. Mr. Rothenburg asked how many hours Sgt. Roe was there. Sgt. Roe replied some nights from 10:00 p.m. until closing.

Mr. Hulsey asked Council if they had any questions for Sgt. Roe. Councilmember Wynn asked to clarify that Sgt. Roe was there April 5 and July 30, 2010, but he said previous to April he still saw the same circumstances, no menus, no indication of any type of food service was actually previous to his April 5, 2010 meeting. Sgt. Roe replied yes.

Councilmember Price asked when the liquor license was issued. Mr. Hulsey replied the renewal of the license for this year was issued at the end of last year, effective January 1, 2010. Councilmember Price asked when it was originally issued. Mr. Hulsey replied 2004. Councilmember Price asked at that time was there clear evidence of food being able to be sold. Sgt. Roe replied he was not assigned to that group of investigators at that time. Councilmember Price stated that from the pictures it does not look like any substantial food could be cooked or sold and was curious how they received a license in the first place. Mr. Hulsey replied when someone applies for a license, they say they are going to have a restaurant and that they are going to be serving food, and when Community Development goes out and does the inspection, the inspector sees the kitchen facilities and if they have that, Community Development checks that off. When they appear before the Alcohol Review Board, the Board questions them and asks will they be selling food, and the answer is yes. The Board takes them at their word; it is only later when there are reports that food is not being served that they are investigated to see if that is true or not. Councilmember Price asked if they have not been selling food the entire time. Mr. Hulsey replied he did not know, the lawyer for the licensee tells him they were serving food. The city does not know, but does know that on April 5, 2010 and July

30, 2010 there is no evidence that they were capable of selling food in the quantity to meet the 51-49% requirement.

Councilmember Igleheart asked Mr. Hulsey when necessary receipts can be checked to see regarding sales for food and for alcohol, is the information available for this time period. Mr. Hulsey replied this is not ordinarily done, but is done on a spot check basis across the city. This case is based upon when the Police Department came to Legal and said there is a violation. This is based on their personal observation and there was the under-age sale, they felt there was sufficient evidence of that; the count of the delivery of alcohol was based upon what Sgt. Roe learned from the licensee and his manager about where they obtain the alcohol. Mr. Rothenburg has receipts saying that they got 99.9% of their alcohol from there, if so, they still admitted that they got some of it elsewhere, contrary to the ordinance, so with that there is a violation. It will be up to the Council to weigh what Mr. Rothenburg tells them and the evidence he produces to decide based upon the demonstrated violations that occur what the penalty should be in a civil sense.

Councilmember Orlans asked Sgt. Roe to clarify the numbers given from the wholesalers. The purchases from the wholesalers were \$24,000 worth of goods, was that since January of this 2010. Sgt. Roe replied this was over a 24 month period. There was an invoice for \$165.48, another for \$16,000, an invoice for \$7,000, but that included part of 2009 and 2010 because of the way their license goes in between 2009 and 2010. Then, it was \$6,700 and \$4,100 for 2009 and 2010, then \$746 and \$385 for 2009 and 2010. Councilmember Orlans asked what the total amount is for the past two years. Sgt. Roe replied the total amount for 2009 is \$24,553. Total amount for 2010 is \$12,704. According to their documents that they would have provided in their affidavit when they applied for their alcohol license they break it down on the form of 49% - 51% and break it down by the month sales and these numbers here are far less than what would be indicated on those documents. Councilmember Orlans asked Sgt. Roe if he is referring to the documents El Andariego fills out for the city showing their percentages and totals. Sgt. Roe replied yes. Councilmember Orlans asked if the number they put on those forms are much higher. Sgt. Roe replied yes, compared to these numbers from the suppliers. Councilmember Orlans asked if the numbers from the suppliers are available. Mr. Hulsey replied yes for 2009, El Andariego filed those at the end of the year; we do not currently have all the numbers, but do have them per month. The city is relying on the evidence of not having the facilities more than the documentation of it, because Council is authorized to look at the evidence and hear the testimony of Sgt. Roe and conclude that it was impossible to provide food in the amount necessary to meet the 51% requirement.

Councilmember Price asked what prompted the investigation. Sgt. Roe replied other activities at the business. Councilmember Price asked if the other activities are relevant. Mr. Hulsey replied no they are not relevant in this civil proceeding, but it did bring the police there to investigate and in the course of the other investigation, they discovered these charges that have been brought before Council.

Mr. Rothenburg stated his client has informed him that he declines to testify and he was the only witness tonight. The receipts and invoices are available regarding the work period for the new kitchen equipment and the gas sewer line, which prevented the sale of food. Mr. Rothenburg stated he believes the evidence would have shown that for the last five years his client has been serving food the entire time. Mr. Rothenburg does not have records to show exactly what percentage it was, and feels the pictures can be misleading to the extent that, in this particular instance a lot of food was brought in to be sold, which to his knowledge is not a violation of the ordinance. Mayor Wood asked Mr. Rothenburg if he is tendering documents and

that is his evidence and that is his case. Mr. Rothenburg replied yes.

Mayor Wood asked Mr. Hulseley if he has any objections to the documentary evidence being tendered. Mr. Hulseley replied no. Mayor Wood asked Council if they had any questions for Mr. Rothenburg.

Closing Statement: Mr. Rothenburg stated he understands the evidence presented, there is a clear violation on the sale to a minor, his client was not present, and this is the only time for this violation. In regards to the alcohol from a non-distributor, his client, being from another country, was not up to date on the ordinance, but 99% of it came from the wholesalers and the testimony about things being unloaded is vague. In regards to the food sales, there have always been food sales. It is difficult to know how much food or alcohol people are going to order when they come in. He understands the City of Roswell does not allow bars, but that it has to be a restaurant with a certain amount of food sales, his client is in the process of updating the kitchen and has spent a lot of money to do that and has six years invested in the business. One Councilmember questioned what prompted this; without the ability to have someone testify, it cannot be brought to Council's attention, but it is unfair to his client. His client is seeking a suspension to allow the new equipment to become operational and for the food sales to dramatically increase. The revocation of the alcohol license will result in the immediate failure of this business. This business cannot succeed with just straight food sales. This will result in innocent people losing their jobs and catastrophic for his client, with the possibility of bankruptcy or losing his home. The city has put on a strong case for these violations, other than the violation of the Ordinance, no one was injured; his client asks to be given the opportunity to continue the business and comply with the ordinance and asks for a 30-day suspension. A 60 to 90 day suspension will put him out of business because of the inability to generate enough revenue to pay the monthly expenses.

Closing Statement: Mr. Hulseley stated the evidence clearly shows a violation of sale of alcohol to an undercover agent that has been stipulated; that is enough to enable Council to decide whether to suspend or revoke. The reason the food charge was brought to Council is the evidence shows the kitchen facility is not adequate to meet the definition of a restaurant, which according to Roswell's ordinance, a business has to be able to serve at least one meal 5 days a week, and what was observed in these pictures would not meet that criteria. This Council has stated that over the years, and has made it very clear to all who come before it. Council has directed the Alcohol Beverage Council and Legal Department that the city does not have bars, and does not want bars. The distinction is that the city wants places where families can go where people can get food and get a drink incidental to that, rather than having an establishment that is there primarily to serve alcohol with food being an incidental; he believes that is what Council has before it. While the city is sympathetic to the business problems that exist, the Alcohol Ordinance is clear, the licensee when the licensee got his license stated he understood the ordinance, had read the Ordinance, and would follow the Ordinance, clearly that has not been done. It is within the discretion of Council to do either a suspension, one day up to 4 months because that is what remains in the term of this license, or revocation. The recommendation from the Police Department is revocation and what Legal is asking of Council rather than suspension, but it is in the discretion of Council to do as it sees fit.

City Attorney David Davidson explained that at this point in the process, a motion is called and the Council can vote. Mayor Wood asked if there were any comments prior to a motion.

Motion: Councilmember Wynn motioned to have a complete revocation of the liquor license of Mostafa Mirzakhanelou, El Andariego, 100 Norcross Street, Roswell,

Georgia to be a complete revocation of the liquor license. Councilmember Orlans seconded the motion.

Councilmember Orlans, referring to Mr. Rothenburg's statement that his client was not up to date with the Ordinance, stated the Board any time someone comes in to get a license makes a point to be sure that the licensee has read the Ordinance and understands the Ordinance, so he just cannot accept that excuse. It was the responsibility of the applicant to be well aware of and understand the city's ordinances.

Councilmember Dippolito commented it was clear that there was no intention to sell any significant amount of food when looking at the renovation that occurred in April and now going into September. That is a significant amount of time to be without a kitchen if someone is truly a restaurant, that argument is difficult to believe.

A motion was made by Council Member Becky Wynn, seconded by Council Member Jerry Orlans, for revocation of the alcoholic beverage license of Mostafa Mirzakhanlou, El Andariego, 100 Norcross Street, Roswell, Ga. The motion carried by the following vote:

In Favor: 5

Enactment No: RES 2010-08-39

3.

Public Hearing to consider revocation or suspension of the alcoholic beverage license of Fabiola Gutierrez, Cristal Lounge, Inc., 3050 Mansell Road, Suite D, Alpharetta, GA.

Assistant City Attorney Bob Hulsey introduced Jeffrey P. Manciangli, the attorney representing Cristal Lounge, Inc. Mr. Hulsey explained that this hearing is to consider a suspension or revocation of the alcohol license of Fabiola Gutierrez licensee for Cristal Lounge, Inc., 3050 Mansell Road, Suite D, Alpharetta, Georgia. There is a stipulation with Council regarding sale of alcohol to a minor. This is a civil case and preponderance of the evidence. The first charge is the sale of alcohol to a minor, has been taken care of. The second charge is a food violation on Section 3.7.3 A1-4. The licensed premises does not contain kitchen facilities to adequately prepare and serve meals on the premises for customers and less than the 50% of the licensee sales are from food. Council has the authority to go from suspension to revocation.

Opening Statement: Mr. Manciangli stated his client is admitting to the first allegation in the resolution that a sale of an alcohol beverage was made to a minor on the date indicated. There are two charges, the second one makes specific reference to July 30, 2010. In the previous hearing that evidence of photographs were admitted for dates other than those listed in the resolution; objecting to any photographs not relating to the dates listed in the resolution.

Mayor Wood stated Council will hear arguments over admissibility of evidence when it is presented and asked Mr. Hulsey to lay a foundation of the photographs prior to offering them into evidence.

Mr. Hulsey swore in Sgt. Cameron Roe. Mr. Hulsey asked Sgt. Roe to explain to Council what was observed when he went to Cristal Lounge on July 30, 2010, regarding their service of food or lack there of. Sgt. Roe stated when they entered the business there was a small amount of patrons inside. They kitchen area was reviewed. Mayor Wood asked what hour of day the inspection took place. Sgt. Roe

replied around 11:30 p.m. We photographed the kitchen. Mayor Wood asked who "we" would be. Sgt. Roe replied that would be himself and some other agents within his squad. July 30, 2010 was when the alcoholic beverage was sold to the minor. During this time of writing out the citation, the kitchen area was reviewed and they saw a lack of food. Each time in the past, when observing the business the question of when the kitchen would open up was always asked, just in general conversation, when is the cook going to be here, when is something going served. The answers included: my cook is going to be here in a little while. Mayor Wood asked when these earlier visits occurred. Sgt. Roe replied April 5, 2010, at 11:00 p.m. On July 30, 2010, when observing the lack of food for sale in the kitchen area, a flattop grill was noticed. Mr. Hulsey asked Sgt. Roe while he was at Cristal Lounge on July 30, 2010 were any photographs taken, and did he personally take the photographs. Sgt. Roe replied yes and presented them to Council. Mr. Hulsey stated this establishes the foundation for the photographs being shown to Council regarding July 30, 2010; he asked if Mr. Manciangli had any objection to the showing of the pictures. Mr. Manciangli replied no. Sgt. Roe asked what date he should start with. Mr. Hulsey asked Sgt. Roe if he also took pictures on April 5, 2010. Sgt. Roe replied yes. Mr. Hulsey submitted, given what Sgt. Roe was told the night of July 30, 2010, regarding where the cook was and whether there was food or not, and it was the same thing he was told April 5th this establishes a pattern. Council can consider the April 5, 2010 evidence as a pattern whether to decide whether or not the preponderance of evidence of July 30, 2010 support Cristal Lounge was not servicing food. Mayor Wood asked if he was tendering the photographs from April 5, 2010. Mr. Hulsey replied yes, he would like to. Sgt. Roe has testified he was there and took the photographs, he was there on April 5, 2010 and would like to tender all the photographs at that time. Mayor Wood asked if there were no objections to July 30, 2010. Mr. Hulsey confirmed. Mayor Wood asked if there were any objections to the April 5, 2010 photograph; the Council would hear those objections. Mr. Manciangli replied the objection is the resolution sets out two violations occurring on July 30, 2010. The resolution indicates the hearing will be in regards to those charges set out in the resolution. Therefore, the evidence presented should pertain to the charges that are set out. Mayor Wood replied this is a civil matter, it relates to the evidence, and does not believe they are showing it as another occasion when there was not food; to the extent in order to make the decision, he is going to admit the evidence of the photographs on April 5, 2010. Mr. Hulsey asked Sgt. Roe to show Council the photographs of April 5, 2010 and make any comments necessary. Sgt. Roe showed the photographs to Council and explained the kitchen area; in particular, the sandwich area there was a hood he lifted and large roach bugs came crawling out. He did not observe any significant amount of food; the large walk-in cooler was full of beer, found no amount of food in the stand up shelves, there was a small microwave. Found rolls that were hard, stale, and old. There was a fryer where food would be fried, but after removing the aluminum foil, the oil inside the fryer was rancid smelling, dirty, and the oil was cold. The cook top was cold; on the cook top was a skillet with dried up beans. There were a few dishes in there, but for the size and the amount of people that would be coming through there to rotate through that amount of dishes and plates would do a lot. Mr. Hulsey asked Sgt. Roe to admit the photographs for July 30, 2010. Sgt. Roe showed Council the photographs and explained them. Sgt. Roe explained during the visit on July 30, 2010 for the sale of alcohol to a minor the kitchen was in the same state. Going through the kitchen the manager, Mr. Soto, was lying down on the floor when we went in to identify who actually sold alcohol to the minor. It turned out that it was Mr. Soto's mother who was working behind the bar; she did have a servers permit inside the business and she was the one who actually sold the alcohol to the minor. Mr. Soto, the manager, was lying on the floor, trying to fix one of the refrigerators. Regarding the kitchen, the stove, oil was cold, and the food was less. When Mr. Soto was asked when the cook was going to be in, he replied she is on her way; she will be here in a little while. We were there and had

other people inside the business and nobody ever showed up inside to prepare food for anyone, and did not observe any food service, menus, small amount of people inside the establishment, there was no food on the tables, only drinks. Mr. Hulsey asked Sgt. Roe on his personal observations of Cristal Lounge on July 30, 2010, was it capable of serving food on a regular basis. Sgt. Roe replied no it was not. Mr. Hulsey asked Sgt. Roe based upon his personal observation on July 30, 2010 at Cristal Lounge were they serving 50% or more of their sales in food. Sgt. Roe replied no, they were not serving anything; the kitchen area was closed, nothing was served, and it was in the same state observed back in early April 2010. Mr. Hulsey asked Sgt. Roe if he would like to tell Council anything else about his visit on July 30, 2010. Sgt. Roe replied during the visit on July 30, 2010 some other activities were noted; there were video gambling machines and video poker machines inside, and as a follow-up to that, a search warrant was served this past week, three machines were seized, and the manager at the time was arrested for operating commercial gambling. Mr. Hulsey stated depending upon what Council does tonight there would be a separate case regarding the gambling charge. Mr. Hulsey said he had nothing further for Sgt. Roe. Mayor Wood asked if Council had any questions for Sgt. Roe.

Councilmember Wynn asked Sgt. Roe if this was a sting with the minor and how many stings have occurred at this restaurant, or how many times has this restaurant been part of a sting. Sgt. Roe replied under his unit, one time. Councilmember Wynn confirmed this was the first time and asked how long he has been with this unit. Sgt. Roe replied doing these types of investigations, about a year. Councilmember Wynn confirmed this was the first sting done on Cristal Lounge. Sgt. Roe replied for the purpose of alcohol, yes.

Councilmember Price asked Sgt. Roe if the minor was carded. Sgt. Roe replied no, there was no identification asked for.

Cross Examination: Mr. Manciangli asked Sgt. Roe on both occasions April 5, 2010 and July 30, 2010 at the time he was there, was about 10-11:00 p.m. Sgt. Roe confirmed the date and time. Mr. Manciangli asked if there were very few customers in the restaurant. Sgt. Roe replied correct. Mr. Manciangli asked if the hours of operation of the location are until 4:00 a.m. Sgt. Roe replied 2:00 a.m. Mr. Manciangli asked if it was 2:00 a.m. for alcohol service or does the business close at 2:00 a.m. Sgt. Roe replied his understanding is that the business closes at 2:00 a.m. Mr. Manciangli asked after his operation on those evenings, did he stay later in the evening. Sgt. Roe replied for this particular operation we were there until they closed. Mr. Manciangli asked if it was possible on a regular basis, not necessarily the nights he was there or when there was a police presence, because that might have deterred customers from coming, but the majority of their clientele doesn't arrive until later than when he arrived. Sgt. Roe asked if he meant during the times the team was there. Mr. Manciangli replied no, on other occasions, because he assumes that if there was a police presence there people might night have entered the restaurant at that point. Sgt. Roe replied if customers recognize his police presence, then he has an issue, because he is plain clothes they are undercover. Mr. Manciangli replied at some point he started ticketing and inspecting. Sgt. Roe replied yes. Mr. Manciangli asked if at that point it became apparent there was a police presence. Sgt. Roe replied yes, on that day. Mr. Manciangli asked on a regular basis the nights he is not there, is it possible the majority of their clientele does not arrive until much later than when he was there. Mr. Hulsey objected to the question because it called for speculation because Sgt. Roe was not there, he would not know. Mayor Wood asked if Sgt. Roe could answer the question. Sgt. Roe replied he could answer the question to the extent that when the uniform patrol officers would respond to loud noise complaints there, there were probably a few more people there then when he was there. Mr. Manciangli asked if Sgt. Roe was aware that a Roswell officer off duty

works there on Saturdays. Sgt. Roe replied yes. Mr. Manciangli asked if Sgt. Roe has interviewed that employee about what he has observed at the location regarding food sales. Sgt. Roe replied no. Mr. Manciangli asked if he had spoken with that employee about the hours the restaurant is most occupied. Sgt. Roe replied no. Mr. Manciangli confirmed he interviewed or questioned Mr. Soto about the food service on the two nights he was there. Sgt. Roe replied yes. Mr. Manciangli asked if on both occasions the manager told him that food was being brought in. Sgt. Roe replied yes, but he never saw it. Mr. Manciangli asked if when he spoke about a small number of patrons on April 5, 2010 and July 30, 2010, what was the number, five (5) to ten (10) people. Sgt. Roe replied on April 5 there was a dozen and on July 30 there was equal to or less than, the other night when the search warrant was served for the gambling, it was two or 3 patrons, in addition to his dancers and employees. Mr. Manciangli asked even if all of those people were ordering food, he would expect the dollar volume would be low, if there were only five (5) to ten (10) people, there isn't going to be much food sold regardless. Sgt. Roe replied there would need to be food there and some way to cook it for it to be served. Mr. Manciangli stated if everyone had ordered and been served food, the dollar amount that would have been sold would be low. Sgt. Roe replied yes. Mr. Manciangli asked if he attempted to determine what the alcohol sales were on those nights. Sgt. Roe replied he saw on the tables, and the people there had beers in their hands or on their tables. Mr. Manciangli asked about dollar figure. Sgt. Roe replied about \$4 a beer. Mr. Manciangli asked in order to meet that 51-49% they would have to sell more food than alcohol on that day. Sgt. Roe replied yes. Mr. Manciangli asked if in fact on a regular basis they bring in their food at midnight, because that is when people order their food, they could make up that volume readily. Sgt. Roe replied during the times he was there, the food was not brought in at midnight. Mr. Manciangli said so on those two occasions are the only times he can testify to, that food did not arrive while he was there. Sgt. Roe replied yes. Mr. Manciangli asked how long Cristal Lounge has been operating at that location. Sgt. Roe replied they opened up after Chickens and Hens closed down, maybe a year. Mr. Manciangli asked during that time, whether it was his investigation or not, was he, aware of Cristal Lounge ever being cited for the improper food sale or lack of food sales during that one year period. Sgt. Roe replied not to his knowledge. Mr. Manciangli stated that was all of his questions. Mr. Hulsey stated he did not have any further questions for Sgt. Roe.

Mr. Manciangli called Mr. Soto to the stand and asked him to explain his position at Cristal Lounge. Mr. Soto replied he is the manager. Mr. Manciangli asked what days of the week Cristal Lounge is open. Mr. Soto replied they are open six (6) days a week, closed on Wednesdays. Mr. Manciangli asked if Mr. Soto is there almost every night the business is opened. Mr. Soto replied yes. Mr. Manciangli asked what functions he provides at the restaurant. Mr. Soto replied if someone does not show, like the bartender, sometimes if the girl who works in the kitchen does not come, he works in the kitchen too. He does everything, if she does not come, he knows they are to sell 50% of food, he has to do it, because sometimes when she does not come for any reason, she calls and then he takes care of the kitchen. Mr. Manciangli asked if the restaurant serves food on a regular basis. Mr. Soto replied exactly. Mr. Manciangli asked how that is done. Mr. Soto replied what do you mean. Mr. Manciangli explained he has seen the pictures and heard the Sgt. testify that he did not see food. Mr. Soto replied exactly, most of the time, all of the time, he buys the food everyday, if not, sometimes he does not have time to get the food, he calls his wife and she provides the food. Sometimes he is very busy, because he works daytime and nighttime, so sometimes it will be late, so he calls his wife to bring whatever he needs, she brings him the food, most of the time he gets the food. Mr. Manciangli asked for clarification from Mr. Soto asking him that he brings what he needs to serve each day instead of buying in bulk. Mr. Soto replied exactly, if he does not do it, his wife does it, if not the girl working in the kitchen does it. Mr. Manciangli asked what

hours during his operation that most people arrive and can order food. Mr. Soto replied it depends; sometimes he knows they come around 10:00 or 11:00 p.m. Sometimes there are no people, it depends if the people come around midnight, sometimes they come around 1:00 a.m. when he starts doing the food, or start burning the stove, it depends if he gets customers early, which is never; start around 11 p.m. or midnight in the kitchen. Mr. Manciangli asked Mr. Soto if it is his testimony that the majority of his food sales are done shortly before closing between midnight and 2 a.m. Mr. Soto replied exactly. Mr. Manciangli asked about a picture and if it is the practice of Cristal Lounge to serve minors; does he serve minors or does he have practice to not serve minors. Mr. Soto replied no; he has a practice not to serve minors. Mr. Manciangli asked if he can translate the sign written in the picture. Mr. Soto replied the sign says, "We do not sell alcohol to minors, it is against the law." Mr. Manciangli asked if that is something the employees of the restaurant are made aware of. Mr. Soto replied exactly. Mr. Manciangli asked Mr. Soto if an alcohol sale was made to a minor, which it was on July 30, 2010, was it an accident. Mr. Soto replied exactly, it was an accident and my mother worked that night; we suspended her for a couple days, because she is not supposed to do that, she completely forgot to ask the lady for her identification.

Mr. Hulsey asked Mr. Soto if he recalled telling Sgt. Roe on the night of July 30, 2010, that the cook was on her way and bringing the food with her. Mr. Soto replied exactly. Mr. Hulsey asked if the cook ever arrived that night. Mr. Soto replied yes. Mr. Hulsey asked if he was surprised that Sgt. Roe testifies that there was nobody there up to the time of closing with food. Mr. Soto replied the night, like I said if she does not come, he is the one who takes care of the kitchen. She came around midnight, because this is what happened, she called him before she came and asked if there were people or not. Sometimes she calls him around 7:00 p.m. and comes in and cleans up, she called to see if there were people, if there are people she comes right away. Mr. Hulsey asked if there are not any people he does not have the cook come in. Mr. Soto replied they cook, even if they do not have people. Mr. Hulsey asked who cooks if the cook is not there. Mr. Soto replied if she is not there he takes care of the kitchen. Mr. Hulsey confirmed if the cook is not there Mr. Soto does the cooking. Mr. Soto replied yes, he cooks; sometimes he does tacos, tortillas, Mexican food. Sometimes he has to work when his mom gets sick in the kitchen, sometimes he works in bar. Mr. Hulsey asked if there are any printed menus. Mr. Soto replied no, he does not have any printed menus. He tells the ladies who take care of the tables to tell them what they have. Mr. Hulsey asked Mr. Soto to tell the Council what the prices are for his food. Mr. Soto replied three tacos for \$7; tortillas \$5; chicken wings with fries \$10; two flautas \$4; carne asada \$10. Mr. Hulsey asked the price per beer. Mr. Soto replied \$4.

Mayor Wood asked if Mr. Soto brought any receipts. Mr. Soto replied no, he did not bring any they are at his business. Mayor Wood confirmed that he has all the receipts at the establishment. Mayor Wood asked Mr. Soto if he buys the food or does somebody else. Mr. Soto replied sometimes he buys the food, sometimes his wife, sometimes the girl who takes care of the kitchen, but he is the one who "put" the money. Mayor Wood asked if he keeps a record of how much food he buys each week. Mr. Soto replied exactly, he has the receipt. Mayor Wood asked how much did he spend in food last week. Mr. Soto replied \$700-\$800. Mayor Wood asked how much he spent on beer last week. Mr. Soto replied \$450 one side and paid \$550. Mayor Wood asked for confirmation that he spent \$700 worth of food and bought \$950 worth of beer. Mr. Soto replied it was around that. Mayor Wood had no further questions for Mr. Soto and asked if any Councilmembers had any questions.

Councilmember Wynn asked Mr. Soto asked for clarification regarding his statement that the cook would bring the food everyday, but if the cook does not show up then

he would be in the kitchen and asked what he would cook. Mr. Soto replied his wife is the cook. Ms. Wynn asked if his business only cooks from midnight until 2:00 a.m. Mr. Soto replied they close at 2:00 a.m. sometimes people still ask him for food, sometimes we close at 3:00 a.m. Ms. Wynn asked Mr. Soto what he does with the extra food, if Sgt. Roe has never seen any evidence of food, what happens with the extra food, asked if he is able to buy enough food that everyone eats that night. Mr. Soto replied exactly, wants to explain what happens. When things start over there, she spent a lot money, they left the food over there. He feels it better to have the food made every single day, sometimes the food is left there if it was really late, but the next day if there is extra food he brought it back home and next day they know they need more food. Ms. Wynn asked if anyone asked the minor for her identification. Mr. Soto replied no, that night he was in the kitchen. Ms. Wynn asked when the person comes in was she asked for her identification before she was served alcohol. Mr. Soto replied no.

Closing Arguments: Mr. Manciangli stated, as part of his argument would like to tell Council about the license holder Ms. Gutierrez, who is sitting here. Mayor Wood replied Council does not want to hear evidence that is not in the case already, the evidence is closed, and he needs to argue the case based upon the facts in the evidence. Mr. Manciangli replied this does not go to the facts of the case, what he is doing in his closing is addressing what is an appropriate resolution. His client has admitted the violation regarding the service to a minor. His client has disputed the sales issues, and feels through the testimony of Mr. Soto it establishes, at least it makes it much less clear, when listening to the Sgt., he did not see food there, he saw the grill was cold, it makes it sound similar to the prior case, and it is different from that. His client does bring the food there, and food is served on a regular basis. Council heard the testimony from the Sgt., there were only a handful of people in there at a time, it is not like a Chili's where the kitchen is being in operation all the time. It is a mom and pop operation, and if there is no one there they do not have the kitchen up and running, when people arrive they get the kitchen going. Mr. Manciangli state he knows based on the first violation that is sufficient for the Council to take whatever action it deems necessary including revocation. Mr. Manciangli suggested that revocation would be excessive in this instance. This is the first time this license holder has been before the Council, it alleges a single violation of the sale to a minor; those things happens from time to time; in any organization there are rules that are set out and employees do not always follow those rules. Ms. Gutierrez is the license holder and he knows she is legally responsible, and it is her license that is at stake. Mr. Manciangli stated this is not a business running amuck, or that is out of control. Technically, this violation could lead to a revocation, and his client does not have a pattern of bad behavior that would justify that kind of fine. Ms. Gutierrez is a U.S. citizen, she is an immigrant to the country; Mr. Soto has a work permit, is also an immigrant, and they are doing the best they can. His client opened a small business, they are trying to abide by the rules, obvious in this case there was a violation, they are sorry about that, and are asking Council to give them the opportunity to continue. This is Ms. Gutierrez's only source of income, she supports a family, she sends money to her mother that does not live here. A revocation or significant suspension would mean shutting down the business. His client does not have the resources to go on longer than a week without it. Given all the circumstances asking Council to suspend the license for a week or ten (10) days, it may not sound much to Council, it would have a definite impact on them, it would wake them up, make sure they get back into full compliance and give them another opportunity.

Mr. Hulsey stated he feels the issue here is a pattern. He believes the testimony shows that Sgt. Roe was out there on April 5, 2010; Council saw the photographs. There are conflicting stories from Mr. Soto saying he buys food, the cook comes and cooks it. Mr. Soto told Sgt. Roe that the cook brings the food and comes there.

There are no printed menus, no menu on the wall; he believes they stress many times they have a small crowd, therefore they would not sell much food, they don't begin selling food until midnight in most cases and only sell until 2:00 a.m., perhaps 4:00 a.m. They can only serve alcohol until 2:00 a.m. Mr. Soto stated he has receipts, but did not bring receipts. Based upon the preponderance of the evidence clearly there is no restaurant operating on the premises. There is money being made from activities other than food, other than alcohol sales. The charge of commercial gambling could not be brought to Council tonight, but that was charged. Mayor Wood stated Council would not hear about the commercial gambling at this hearing. Mr. Hulseley stated there is a clear violation selling to a minor. Council saw the pictures, the kitchen facilities are there, it can be used, and should be used, it is supposed to be used. There is evidence the kitchen is not being used. Any violation of this would warrant revocation or suspension, whichever the Council sees fit. The Police Department feels strongly about their recommendation that Council revoke the license, not suspend it.

Councilmember Wynn stated she was concerned that they did not card the minor when that should be done all the time with everyone; after reading the ordinance they should have adequate and sanitary kitchen facilities and staff to prepare, cook, and serve suitable food for its guests. It has been proven not to be sanitary, and there is not always the staff, which is a violation.

Motion: Councilmember Wynn motioned to have a complete revocation of the liquor license of Fabiola Gutierrez, Cristal Lounge, Inc., 3050 Mansell Road, Suite D, Alpharetta, Georgia. Councilmember Orlans seconded the motion.

A motion was made by Council Member Becky Wynn, seconded by Council Member Jerry Orlans, for revocation of the alcoholic beverage license of Fabiola Gutierrez, Cristal Lounge, Inc., 3050 Mansell Road, Suite D, Alpharetta, Ga. The motion carried by the following vote:

In Favor: 5

Enactment No: RES 2010-08-40

4.

Recommendation for closure to discuss personnel.

City Attorney David Davidson recommended closure to discuss personnel and acquisition of real estate.

A motion was made by Council Member Betty Price, seconded by Council Member Rich Dipolito, that this item be approved. The motion carried by the following vote:

In Favor: 5

Adjournment

After no further business, the Special Called Meeting adjourned at 10:30 p.m.