

RESOLUTION NO.: R-2012-024

*Affirming the vote of City Council revoking the business license of  
Cola Entertainment Group LLC d/b/a Metro Live*

WHEREAS, on February 16, 2012, Cola Entertainment Group LLC d/b/a Metro Live was issued a Notice of Suspension of Business License which stated a hearing would be held before the Columbia City Council on February 22, 2012; and,

WHEREAS, no representative of Cola Entertainment Group LLC d/b/a Metro Live appeared at the hearing; and

WHEREAS, Columbia City Council, after considering the testimony and evidence presented, voted to uphold the suspension and revoke the business license; and,


WHEREAS, Columbia City Council is required to issue and adopt a Written Decision setting forth the factual basis and legal grounds upon which the denial of the appeal was based; NOW THEREFORE,

BE IT RESOLVED by the Mayor and Council this 13th day of March, 2012, hereby approves and adopts the attached Written Decision as its factual basis and the legal grounds upon which it denied the appeal; and,

BE IT FURTHER RESOLVED that Mayor is authorized to sign the attached Written Decision on behalf to Columbia City Council.

Requested by:

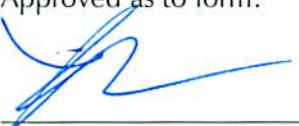
Business License Administrator

  
MAYOR


Approved by:

  
City Manager

Approved as to form:

  
City Attorney

ATTEST:

  
City Clerk

Introduced: 3/13/2012  
Final Reading: 3/13/2012

ORIGINAL  
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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
CITY OF COLUMBIA )

WRITTEN DECISION BY COLUMBIA CITY COUNCIL  
CONCERNING BUSINESS LICENSE REVOCATION OF  
COLA ENTERTAINMENT GROUP LLC D/B/A METRO LIVE

On February 16, 2012, the City of Columbia Business License Administrator Brenda Kyzer issued a Notice of Suspension of Business License to Cola Entertainment Group LLC d/b/a Metro Live (Metro Live) based on Metro Live's violation of the City's smoking ordinance, City of Columbia Code of Laws ("City Code") §§8-215 – 8-221. Specifically, Metro Live was convicted of violating the smoking ordinance three times within a six-month period beginning in August of 2011 and ending in January of 2012. The Notice of Suspension of Business License stated that a hearing would be held before the Columbia City Council on February 22, 2012, at 6:00 p.m.

Ms. Kyzer appeared at the hearing on behalf of the Business License Division. No representative of Metro Live appeared at the hearing. Ms. Kyzer testified that she provided written notice of the hearing to Metro Live both by certified mail to the "Managing Member", Robert D. Shelton, at the address provided by him in his business license application, and by personal service to a member of the household of Kevin D. Johnson, the local manager who had been cited with the three aforementioned smoking ordinance violations in the Municipal Court. See City Code §11-46 (stating that written notice of the hearing shall be provided to appellant). A copy of the Notice of Suspension of Business License and the affidavits of service were placed into the record.

Ms. Kyzer then presented the case of the Business License Division. She placed into the record for Council's consideration certified copies of the City Code §11-45 of the Business License ordinance, which provides:

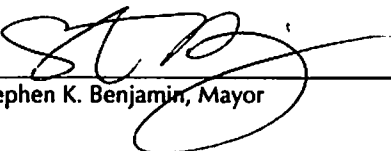
When the license inspector determines that: . . . (5) a licensee has engaged in an unlawful activity or nuisance related to the business; the license inspector shall give written notice to the licensee or the person in control of the business within the city by personal service or registered mail that the license is suspended pending a hearing before the city council for the purpose of determining whether the license should be revoked.

She then submitted certified copies of the smoking ordinance, highlighting three relevant provisions: §8-216, which defines "Workplace" to include indoor areas, structures, buildings at which one or more employees perform services for their employer including restaurants and bars; §8-217, which prohibits smoking in any workplace; and §8-220(a) which deems a violation of this division to be a public nuisance. She further noted that §8-220(d)(2) deems three or more infractions that occur within a six-month period at a workplace to be a nuisance related to the business. Ms. Kyzer concluded by recommending that City Council uphold the suspension and revoke the business license of Metro Live.

Councilmember Rickenmann questioned whether there had been other violations of the smoking ordinance that were not made a part of the record, and Ms. Kyzer testified that there had been, but these three were the only ones for which she had certified copies of both the uniform ordinance summons and the convictions; the Municipal Court was unable to produce the uniform ordinance summons for a prior conviction. Councilmember Devine asked if service was effected upon a member of Kevin Johnson's household who was of suitable age or discretion residing therein. Legal counsel for the department advised that the process server was routinely used by the City and was familiar with the requirements proscribed by law.

Based on the testimony presented by Ms. Kyzer and the written evidence provided at the hearing, City Council makes the following findings of fact: (1) Metro Live was convicted of three or more violations of the smoking ordinance, §§8-215–8-221, occurring within a six-month period at a workplace; (2) §8-220(d)(2) establishes that such violations constitute a nuisance related to the business; (3) proper notice of the hearing, as required by §11-45 was provided to Metro Live; and (4) Metro Live failed to make an appearance and present testimony on its behalf. City Council hereby upholds the suspension and revokes the business license of Cola Entertainment Group, LLC d/b/a Metro Live.

This written decision will become final unless the decision is appealed to a court of competent jurisdiction within ten days after service.

  
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Stephen K. Benjamin, Mayor

\_\_\_\_\_  
Date