

Mayor

Joe Coviello

Council Members

District 1: John Gunter

District 2: John M. Carioscia
Sr.

District 3: Marilyn Stout

District 4: Jennifer I. Nelson

District 5: Dave Stokes

District 6: Richard Williams

District 7: Jessica Cosden

**City Manager**

John Szerlag

City Attorney

Dolores Menendez

City Auditor

Andrea R. Butola

Interim City Clerk

Kimberly Bruns

1015 Cultural Park Blvd.
Cape Coral, FL

**AGENDA FOR THE SPECIAL MEETING OF THE
CAPE CORAL CITY COUNCIL**

January 8, 2019

4:30 PM

Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

1. MEETING CALLED TO ORDER

A. MAYOR COVIELLO

2. INVOCATION/MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

4. ROLL CALL

A. MAYOR COVIELLO, COUNCIL MEMBERS CARIOSCIA,
COSDEN, GUNTER, NELSON, STOKES, STOUT, WILLIAMS

5. CITIZENS INPUT TIME

A maximum of 60 minutes is set for input of citizens on matters concerning the
City Government; 3 minutes per individual.

6. BUSINESS

A. PUBLIC HEARING - Emergency Suspension of Dixie
Roadhouse/Rockade's Extended Hours Permit, Resolution 15-19 A
Resolution of the City of Cape Coral Lifting, Suspending, or
Revoking the Suspension of the Colosseum LLC d/b/a Dixie
Roadhouse Extended Hours Permit. *Quasi-Judicial, All Persons
Testifying Must Be Sworn In

7. TIME AND PLACE OF FUTURE MEETINGS

- A. A Regular Meeting of the Cape Coral City Council is Scheduled for Monday, January 14, 2019 at 4:30 p.m. in Council Chambers

8. MOTION TO ADJOURN

This agenda should not be viewed as containing definitive information on matters of law with respect to ordinance and resolution summaries.

GENERAL RULES AND PROCEDURES REGARDING THE CAPE CORAL CITY COUNCIL AGENDA

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state or local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

***PUBLIC HEARINGS DEPARTMENT OF COMMUNITY DEVELOPMENT CASES**

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.

2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.
3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.
4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.
5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.
6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Item Number: 6.A.
Meeting Date: 1/8/2019
Item Type: BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

PUBLIC HEARING - Emergency Suspension of Dixie Roadhouse/Rockade's Extended Hours Permit, Resolution 15-19 A Resolution of the City of Cape Coral Lifting, Suspending, or Revoking the Suspension of the Colosseum LLC d/b/a Dixie Roadhouse Extended Hours Permit. *Quasi-Judicial, All Persons Testifying Must Be Sworn In

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

Emergency Suspension Letter to Permit Holder
Request for a hearing from Permit Holder through consultant
Resolution 15-19 Lift permit
Resolution 15-19 Suspend permit
Resolution 15-19 Revoke permit

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description

Type

▣	Emergency Suspension to Permit Holder	Backup Material
▣	Permit Holder's request for a hearing through consultant	Backup Material
▣	Resolution 15-19 Lift Suspension	Backup Material
▣	Resolution 15-19 Suspend Permit	Backup Material
▣	Resolution 15-19 Revoke Permit	Backup Material



DAVID NEWLAN
CHIEF OF POLICE

WWW.CAPECOPS.COM

December 12, 2018

JP 12/12/18

Ms. Lynn Pippenger, Managing Member
Colosseum, LLC
1023 SE 47th Terrace
Cape Coral, FL 33904

HAND DELIVERY

Re: Emergency Suspension of Dixie Roadhouse/Rockade Extended Hours Permit

Dear Ms. Pippenger:

Pursuant to Section 3-2(c)(7)b. of the City of Cape Coral Code of Ordinances, I believe there is an immediate and serious danger to the public health, safety, and welfare requiring emergency suspension of the extended hours permit issued by the City of Cape Coral in April 2018 to Colosseum, LLC for the purpose of allowing the sale, service, and consumption of alcohol at the Dixie Roadhouse/Rockade establishment(s) at the above address. I am taking this action as a result of the following facts:

On December 8, 2018, at or about 2:52 a.m, approximately 40 patrons exited from Dixie Roadhouse and engaged in fighting on SE 47th Terrace and in the public parking lot across the street from Dixie Roadhouse. During the altercations, crowd members were yelling "Chop Boys", which is a gang out of Fort Myers that is also on the U.S. Attorney's Most Violent Offender List. This created a dangerous condition not only to the persons engaged in the altercations and to the law enforcement officers at the scene, but also to the public at large. Cape Coral Police detail officers were surrounded trying to break up the multiple fights on the street and in the parking lot. Officers called for backup and all south units responded to the scene, totaling 13 police officers. The necessary allocation of police personnel required by this violent activity compromised the police protection for the remaining south district for approximately one hour.

Furthermore, Cape Coral Police officers have reported an increase in gang members patronizing the Dixie Roadhouse. In particular, officers have reported observing members of the "Eternals" biker gang, a group affiliated with the "Outlaws" gang, congregating at Dixie Roadhouse. As recently as December 8, 2018, police officers observed members of both the "Eternals" and the "Outlaws" gangs leaving the Dixie Roadhouse at approximately 3 a.m. closing time. This situation is particularly disturbing because you and I have had numerous discussions during our extended bar hour meetings, including as recently as November 2018, concerning gang members frequenting Dixie Roadhouse, the potential consequences of such patronage, and the safeguards that you could readily implement to reduce, if not completely eliminate, this activity at your establishment. For example, my officers and I have recommended that you prohibit gang colors in your establishment and place a sign notifying


patrons of that prohibition. In contrast to a neighboring establishment that followed this recommendation and at which police officers have not observed an increased gang member presence, you specifically declined to follow this recommendation without apparent regard for the gang presence at your establishment and associated public health, safety, and welfare concerns. Furthermore, a gang training class was held on February 18, 2016, at Chester Street Resource Center for south district bar owners, including yourself, to discuss the same concerns we are dealing with now. As I have attempted to impress upon you, once a gang presence is established at a business premises, it only too easily becomes entrenched there to the detriment of both the business establishment and the public health, safety, and welfare.

My concern about the increasing threat to the public health, safety and welfare resulting from activity at Dixie Roadhouse is compounded by what I believe to be your demonstrated failure to correct conduct or activity that has resulted in a negative impact on the health, safety, and welfare of the public generally, as well as of the patrons of Dixie Roadhouse. More specifically, you have failed or refused to take reasonable precautions to discourage unlawful activity including, but not limited to, disturbances and vehicular use by intoxicated patrons. For instance, during the month of September 2018 alone, Dixie Roadhouse patrons were involved in six separate incidents concerning intoxicated persons. Two patrons were found passed out, one in the bar and the other in a nearby public parking lot. Two patrons were arrested as a result of DUI incidents, one of which resulted in a DUI-related vehicle crash. The police were called regarding an intoxicated Dixie Roadhouse patron who mistakenly reported his vehicle had been stolen from a public parking lot and another intoxicated patron threatened police officers in an unsuccessful effort to get them to kill him.

Although we have discussed several times the need for your establishment to impress on your employee's responsible hospitality industry practices concerning both the welfare of intoxicated patrons and the need to refuse to serve persons who are or are in danger of becoming intoxicated, I have not observed any appreciable improvement in your management of these practices. I believe the December 8, 2018 incident(s) described above are either directly or indirectly a result of your failure to address the issues that we have repeatedly discussed.

For these reasons, and in order to protect our community and police officers, I am suspending the extended hours permit for Dixie Roadhouse/Rockade, effective immediately, pursuant to Section 3-2(c)(7)b. You have the right to request an emergency public hearing before the City Council challenging the need for this summary action. If you wish to do so, you must make a written request for such hearing to the City Manager within 30 days of being served with this notice. Failure to timely request an emergency public hearing shall result in the automatic revocation of your extended hours permit without further action by the City.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Newlan', with a long horizontal flourish extending to the right.

David Newlan, Police Chief
Cape Coral Police Department



Joe Mazurkiewicz, Jr.
President
P O Box 101655
Cape Coral, FL 33910

Telephone 239-470-5778
Email: joe@bjmconsult.com

December 21, 2018

Mr. John Szerlag, City Manager
City of Cape Coral
PO Box 150027
Cape Coral Florida 33915

Re: Emergency Suspension of Dixie Roadhouse/Rockade Extended Hours Permit

Dear Mr. Szerlag:

I have been engaged by the Owners of Colosseum, LLC to represent them in the above mentioned matter.

Please accept this letter as a request for an emergency public hearing before the City Council challenging the action taken by David Newlan, Police Chief, laid out in his letter of December 12, 2018, suspending Dixie Roadhouse/Rockade's Extended Hours Permit, pursuant to Section 3-2(c)(7)b of the City of Cape Coral Code of Ordinances.

The Owners take exception to many of the accusation laid out in the letter of December 12th. They believe their exceptional longstanding relationship with the Cape Coral Police Department has been ignored by the Chief in taking his unilateral action of suspending their Extended Hours Permit, and it was based on recent incidents that have been mischaracterized in the letter.

We believe as managers of Dixie Roadhouse/Rockade we have worked in a very proactive manner with the Cape Coral Police Department and other City Departments to establish a safe and friendly environment within the 47th Terrace Entertainment District of the South Cape.

We look forward to presenting the facts associated with every aspect of our business since we began operating under our Extended Hours Permit, and answering all the issues raised in the Chief's Letter of December 12th.

To this end we would be happy to meet with you and your appropriate staff to discuss this situation prior to the hearing in front of City Council.

Please let us know when this issue will be scheduled for a hearing in front of City Council.

Thank you for your consideration!

Sincerely,

Joe Mazurkiewicz, Jr.

President, BJM Consulting, Inc.

RESOLUTION 15 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL LIFTING THE SUSPENSION OF THE COLOSSEUM LLC d/b/a DIXIE ROADHOUSE EXTENDED HOURS PERMIT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 3-2(c)(7)(b) of the City of Cape Coral Code of Ordinances provides that the Cape Coral Police Chief may summarily order the emergency suspension of an extended hours permit if the Chief believes that an immediate serious danger to the public health, safety or welfare requires such a suspension; and

WHEREAS, on December 12, 2018, the Cape Coral Police Chief ordered an emergency suspension of the Colosseum d/b/a Dixie Roadhouse/Rockade extended hours permit based on events that occurred on December 8, 2018, pursuant to Section 3-2(c)(7)b of the City of Cape Coral Code of Ordinances; and

WHEREAS, the permit holder, Colosseum LLC d/b/a Dixie Roadhouse/Rockade, has requested a public hearing before the City Council challenging the emergency suspension as provided in Section 3-2(c)(7)b of the City of Cape Coral Code of Ordinances; and

WHEREAS, after consideration of the evidence and testimony presented by the permit holder and City staff at the public hearing, the City Council desires to lift the suspension of the Dixie Roadhouse extended hours permit.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby lifts the suspension of the Colosseum LLC d/b/a Dixie Roadhouse/Rockade extended hours permit.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2019.

JOE COVIELLO, MAYOR

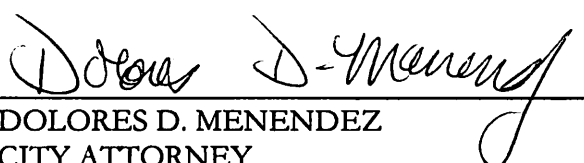
VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2019.

KIMBERLY BRUNS
INTERIM CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res/Dixie Roadhouse-Lift Suspension

RESOLUTION 15 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL SUSPENDING THE COLOSSEUM d/b/a DIXIE ROADHOUSE/ROCKADE EXTENDED HOURS PERMIT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 3-2(c)(7)(b) of the City of Cape Coral Code of Ordinances provides that the Cape Coral Police Chief may summarily order the emergency suspension of an extended hours permit if the Chief believes that an immediate serious danger to the public health, safety or welfare requires such a suspension: and

WHEREAS, on December 12, 2018, the Cape Coral Police Chief ordered an emergency suspension of the Colosseum LLC d/b/a Dixie Roadhouse/Rockade extended hours permit based on events that occurred on December 8, 2018, pursuant to Section 3-2(c)(7)b of the City of Cape Coral Code of Ordinances; and

WHEREAS, the permit holder, Colosseum LLC d/b/a Dixie Roadhouse/Rockade, has requested a public hearing before the City Council challenging the emergency suspension as provided in Section 3-2(c)(7)b of the City of Cape Coral Code of Ordinances; and

WHEREAS, after consideration of the evidence and testimony presented by the permit holder and City staff at the public hearing, the City Council finds that the danger to the public health, safety or welfare is ongoing so as to require the suspension of the Colosseum LLC d/b/a Dixie Roadhouse/Rockade extended hours permit, pursuant to Section 3-2(c)(7) of the City of Cape Coral Code of Ordinances.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby suspends the Colosseum LLC d/b/a Dixie Roadhouse/Rockade extended hours permit until _____.

Section 2. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2019.

JOE COVIELLO, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	CODDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2019.

KIMBERLY BRUNS
INTERIM CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY
res/Dixie Roadhouse-Suspend Permit for Specified Time Period

RESOLUTION 15 - 19

A RESOLUTION OF THE CITY OF CAPE CORAL REVOKING THE COLOSSEUM LLC d/b/a DIXIE ROADHOUSE/ROCKADE EXTENDED HOURS PERMIT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 3-2(c)(7)(b) of the City of Cape Coral Code of Ordinances provides that the Cape Coral Police Chief may summarily order the emergency suspension of an extended hours permit if the Chief believes that an immediate serious danger to the public health, safety or welfare requires such a suspension: and

WHEREAS, on December 12, 2018, the Cape Coral Police Chief ordered an emergency suspension of the Dixie Roadhouse extended hours permit based on events that occurred on December 8, 2018, pursuant to Section 3-2(c)(7)b of the City of Cape Coral Code of Ordinances; and

WHEREAS, the permit holder, Colosseum LLC d/b/a Dixie Roadhouse/Rockade, has requested a public hearing before the City Council challenging the emergency suspension as provided in Section 3-2(c)(7)b of the City of Cape Coral Code of Ordinances; and

WHEREAS, after consideration of the evidence and testimony presented by the permit holder and City staff at the public hearing, the City Council finds that the danger to the public health, safety or welfare is ongoing so as to require the revocation of the Colosseum LLC d/b/a Dixie Roadhouse/Rockade extended hours permit, subject to renewal pursuant to the terms of Section 3-2(c)(6) of the Code of Ordinances.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby revokes the Colosseum LLC d/b/a Dixie Roadhouse/Rockade extended hours permit, subject to renewal pursuant to the terms of Section 3-2(c)(6) of the Code of Ordinances.

Section 2. Pursuant to Section 3-2(c)(7)d of the City of Cape Coral Code of Ordinances, no application for renewal for that location shall be considered within 12 months of the effective date of this resolution.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2019.

JOE COVIELLO, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO	_____	NELSON	_____
GUNTER	_____	STOKES	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	COSDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2019.

KIMBERLY BRUNS
INTERIM CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res/Dixie Roadhouse-Revoke Permit