



# City of Grand Island

Tuesday, August 23, 2016

Council Session

## Item E-1

**Public Hearing on Request from Simbert, LLC dba Peacock  
Lounge, 2430 N. Broadwell Avenue for a Class “C” Liquor License**

*Council action will take place under Resolutions item I-1.*

Staff Contact: RaNae Edwards

# Council Agenda Memo

**From:** RaNae Edwards, City Clerk

**Meeting:** August 23, 2016

**Subject:** Public Hearing on Request from Simbert, LLC dba Peacock Lounge, 2430 N. Broadwell Avenue for a Class “C” Liquor License

**Presenter(s):** RaNae Edwards, City Clerk

## Background

Section 4-2 of the Grand Island City Code declares the intent of the City Council regarding liquor licenses and the sale of alcohol.

### **Declared Legislative Intent**

- It is hereby declared to be the intent and purpose of the city council in adopting and administering the provisions of this chapter:
- (A) To express the community sentiment that the control of availability of alcoholic liquor to the public in general and to minors in particular promotes the public health, safety, and welfare;
  - (B) To encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation of the sale and distribution thereof; and
  - (C) To ensure that the number of retail outlets and the manner in which they are operated is such that they can be adequately policed by local law enforcement agencies so that the abuse of alcohol and the occurrence of alcohol-related crimes and offenses is kept to a minimum.

## Discussion

Simbert, LLC dba Peacock Lounge, 2430 N. Broadwell Avenue has submitted an application for a Class “C” Liquor License. A Class “C” Liquor License allows for the sale of alcohol on and off sale inside the corporate limits of the city.

City Council action is required and forwarded to the Nebraska Liquor Control Commission for issuance of all licenses. This application has been reviewed by the Clerk, Building, Fire, Health, and Police Departments. See attached Police Department report.

Also submitted with the application was a request from Kristen Ackerman, 1118 West 8<sup>th</sup> Street for a Liquor Manager Designation.

Staff recommends denial of the application based on the Police Department report (see attached). Denial is based on Nebraska State Statute 53-125 (2) and the Rules and Regulations of the Nebraska Liquor Control Act 010.01.

### **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Approve the application.
2. Forward to the Nebraska Liquor Control Commission with no recommendation.
3. Forward to the Nebraska Liquor Control Commission with recommendations.
4. Deny the application.

### **Recommendation**

Based on the Nebraska Liquor Control Commission's criteria for the approval of Liquor Licenses, City Administration recommends that the Council **deny** this application.

### **Sample Motion**

Move to **deny** the application for Simbert, LLC dba Peacock Lounge, 2430 N. Broadwell Avenue for a Class "C" Liquor License based on the Police Department report and Nebraska State Statute 53-125 (2) and the Rules and Regulations of the Nebraska Liquor Control Act 010.01.

08/18/16  
15:40

Grand Island Police Department  
LAW INCIDENT TABLE

Page: 450  
1

```

City : Grand Island
Occurred after : **:***:** **/**/****
Occurred before : **:***:** **/**/****
When reported : 08:00:00 07/19/2016
Date disposition declared : 07/28/2016
Incident number : L16072369
Primary incident number :
Incident nature : Liquor Lic Inv Liquor Lic Inv
Incident address : 2430 Broadwell Ave N
State abbreviation : NE
ZIP Code : 68803
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitera D
How received :
Agency code : GIPD GIPD Grand Island Police Dept
Responsible officer : Vitera D
Offense as Taken :
Offense as Observed :
Disposition : ACT Active
Misc. number :
Geobase address ID : 1323
Long-term call ID :
Clearance Code : CL CL Case Closed
Judicial Status :

```

=====

INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	100641	08/04/16	Jamson, Paul	Building Owner
NM	30293	07/26/16	Ackerman, Kristen M	Owner/Manager
NM	103667	07/26/16	Valderaz, Guadalupe P	Owner
NM	179536	07/26/16	Peacock Lounge,	Business Involved

LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
1	LT03	LT03 Bar/Night Club	

LAW INCIDENT NARRATIVE:

11:09:17 07/26/2016 - Vitera D  
The Peacock Lounge is applying for a new liquor license, and Kristen Ackerman is applying to be the liquor manager.

LAW INCIDENT RESPONDERS DETAIL:

Se	Responding offi	Unit n	Unit number

08/18/16  
15:40

Grand Island Police Department  
LAW INCIDENT TABLE

Page: 450  
2

1 Vitera D

LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
1	Vitera D	12:37:57 07/26/2016

08/18/16  
15:40

Grand Island Police Department  
LAW INCIDENT TABLE

450  
Page: 3

318

Grand Island Police Department  
Supplemental Report

Date, Time: Tue Jul 26 12:38:10 CDT 2016  
Reporting Officer: Vitera  
Unit- CID

A company called "SimBert," which is owned by Guadalupe Valderaz and Kristen Ackerman, is applying for a Class C (beer, wine, distilled spirits on & off sale) LLC Retail Liquor license for the Peacock Lounge. They are leasing the building from Paul Jamson. Paul advised that he is maintaining the rights to the name "Peacock Lounge."

Neither Guadalupe nor Kristen listed a spouse on the application. Guadalupe has lived in Grand Island since at least 1976 while Kristen has lived in Grand Island at different times for more than 20 years. Guadalupe didn't list any criminal convictions while Kristen listed: No Proof of Insurance in 1999, Driving Under Suspension in 2000, Driving During Suspension in 2002, No Pet Registration and Vaccination in 2005, Disturbing the Peace in 2009, Procure/Sell to a Minor in 2012, and Theft in May of 2016. Kristen is also applying to be the liquor manager.

I checked each applicant through Spillman and NCJIS. Guadalupe didn't have any potential violations listed in Spillman. I didn't find any indication of undisclosed convictions for Kristen in Spillman, however, I did find several code compliance complaints.

In July of 2014, someone complained about Kristen's property having trash and tall weeds coupled with motor oil being drained onto the sidewalk. A GIPD Community Service Officer (CSO) responded to the complaint, verified and addressed the complaint which was taken care of in the allotted timeframe. In December of 2014, a CSO responded to a similar complaint at Kristen's property. This time, it took about four months to gain compliance. During that time, new violations popped up. The last entry on the complaint is in August of 2015 where the CSO said that a reporting error caused the information to not reach the city attorney's office, but the violations were taken care of by the recheck in August. Another code violation complaint was investigated in April of this year alleging that there was trash, junk, and furniture scattered around on the property. The complaint was resolved in the allotted time.

Guadalupe does not have any convictions listed in NCJIS, and Kristen doesn't have any undisclosed convictions in NCJIS. Guadalupe and Kristen each have a valid Nebraska driver's license, and neither one of them have any outstanding warrants for their arrest.

I did a general Internet search on Guadalupe and Kristen but didn't find anything of interest. I also checked a paid law enforcement-only database which tends to provide mostly personal identifying information and information about civil issues. I found that Guadalupe had three civil judgments against her that all went to collections. One for \$713 which she was released from in 1996. One for \$2,245 which she was released from in 2008, and one for \$122 which she was released from in 2008.

Kristen had seven civil judgments listed. Five of them were from Hall County

08/18/16  
15:40

Grand Island Police Department  
LAW INCIDENT TABLE

450  
Page: 4

and were all turned over to collections. The other two were in Los Angeles County. I found information online about the Los Angeles County cases. In one case, the notes say, "Judgment entered as a final disposition on 5/4/92 for (Musgrove, Daniel Bragg) against (Ackerman, Russ), (Ackerman, Kristen). Total \$250." The case status shows "Disposed by judgment" and the case file was destroyed in 2006. The other case shows that a judgment was entered as a final disposition on 12/30/96 against Kristen Marie Ackerman for a total of \$1641.50. The disposition is unknown, and the case file was ordered destroyed in 2007.

I called General Collection about some of the Hall County judgments. I was told they used to have five judgments against Kristen and six "open accounts." The open accounts terminology means that the cases never went to court, a lawsuit was never filed, and the judgments were paid voluntarily. The total between the open accounts and the judgments was \$4575.98. The entire balance has been paid with the last payment being in March of this year. Although some of the payments were made voluntarily, the last of the money was paid through a garnishment of wages.

Besides the judgments listed in the paid online law enforcement-only database, I found two more civil judgments in Hall County by looking in NCJIS. These two judgments have been satisfied. While Kristen has had a lot of judgments against her with most of them going to collections, it appears that they have all been satisfied.

I called Guadalupe on 7/29/16 and set up a meeting with her and Kristen on 8/3/16 at 0900. Nebraska State Patrol Investigator Joe Hansen and I met with Kristen and Guadalupe at the Peacock as scheduled. Paul Jamson was also there. He owns the building and advised that his grandfather started the Peacock back in the 1950's. Paul said even though Kristen and Guadalupe formed a company called "SimBert," they are just using the name of the Peacock and leasing the building from him. Guadalupe had told me on the phone when we set up the meeting that she works full time at the college. When we met, she said she has worked for Central Community College for forty-two years. Guadalupe said her main role for SimBert is to be the bookkeeper.

Investigator Hansen went through a checklist of questions with the applicants. When he was done, I went through the application with Kristen and Guadalupe. I'm going to summarize the rest of the interview due to receiving a call from RaNae Edwards and Kristen Ackerman on 8/4/16 saying that the application has been pulled.

In summary, the issues with this application are that Kristin has been convicted of selling alcohol to a minor which I believe violates Nebraska State Statute 53-131.01 dealing with new licenses. Kristen has a recent theft conviction from May of this year, Kristen has had numerous civil judgments rendered against her over the past twenty years (which have all eventually satisfied), and Kristen had several code enforcement issues which were also all eventually rectified. The theft conviction, civil judgments, and code compliance problems could fall under Nebraska State Statute 53-125 (2). One final issue is that Kristen and Guadalupe stated on the application that they weren't borrowing any money from anyone to establish and/or operate the business. While interviewing them, they said they will borrow \$15,000 to \$20,000 from Paul Jamson if they get a liquor license. The failure to disclose that information on the application could fall under the Rules and Regulations of the Nebraska Liquor Control Act 010.01.

All in all, the GIPD would not recommend that the Council give local approval to this application the way it stands now. It will be revisited when a new

08/18/16  
15:40

Grand Island Police Department  
LAW INCIDENT TABLE

Page: 450  
5

application is submitted.

On 8/15/16, I received an email from RaNae Edwards stating the Peacock is now going back to Council on 8/23/16. RaNae said that she has not received an amended application. If that's the case, the GIPD still recommends that the Council not give local approval to this application for the reasons stated above. The statutes are attached.



# Nebraska Revised Statute 53-131.01

Revised Statutes » Chapter 53 » 53-131.01

53-131

|  
53-132

Print Friendly

## **53-131.01. License; application; form; contents; criminal history record check; verification; false statement; penalty.**

(1) The application for a new license shall be submitted upon such forms as the commission may prescribe. Such forms shall contain (a) the name and residence of the applicant and how long he or she has resided within the State of Nebraska, (b) the particular premises for which a license is desired designating the same by street and number if practicable or, if not, by such other description as definitely locates the premises, (c) the name of the owner of the premises upon which the business licensed is to be carried on, (d) a statement that the applicant is a citizen of the United States, that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquor or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager-applicant, (e) a statement that the applicant intends to carry on the business authorized by the license for himself or herself and not as the agent of any other persons and that if licensed he or she will carry on such business for himself or herself and not as the agent for any other person, (f) a statement that the applicant intends to superintend in person the management of the business licensed and that if so licensed he or she will superintend in person the management of the business, and (g) such other information as the commission may from time to time direct. The applicant shall also submit two legible sets of fingerprints to be furnished to the Federal Bureau of Investigation through the Nebraska State Patrol for a national criminal history record check and the fee for such record check payable to the patrol.

(2) The application shall be verified by the affidavit of the petitioner made before a notary public or other person duly authorized by law to administer oaths. If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury, and upon conviction thereof the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.

# Nebraska Revised Statute 53-125

Revised Statutes » Chapter 53 » 53-125

53-124.15

|  
53-126

Print Friendly

## **53-125. Classes of persons to whom no license issued.**

No license of any kind shall be issued to (1) a person who is not a resident of Nebraska, except in case of railroad, airline, or boat licenses, (2) a person who is not of good character and reputation in the community in which he or she resides, (3) a person who is not a citizen of the United States, (4) a person who has been convicted of or has pleaded guilty to a felony under the laws of this state, any other state, or the United States, (5) a person who has been convicted of or has pleaded guilty to any Class I misdemeanor pursuant to Chapter 28, article 3, 4, 7, 8, 10, 11, or 12, or any similar offense under a prior criminal statute or in another state, except that any additional requirements imposed by this subdivision on May 18, 1983, shall not prevent any person holding a license on such date from retaining or renewing such license if the conviction or plea occurred prior to May 18, 1983, (6) a person whose license issued under the Nebraska Liquor Control Act has been revoked for cause, (7) a person who at the time of application for renewal of any license issued under the act would not be eligible for such license upon initial application, (8) a partnership, unless one of the partners is a resident of Nebraska and unless all the members of such partnership are otherwise qualified to obtain a license, (9) a limited liability company, if any officer or director of the limited liability company or any member having an ownership interest in the aggregate of more than twenty-five percent of such company would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a limited liability company licensee would be ineligible to receive a license under this section for any reason, (10) a corporation, if any officer or director of the corporation or any stockholder owning in the aggregate more than twenty-five percent of the stock of such corporation would be ineligible to receive a license under this section for any reason other than the reasons stated in subdivisions (1) and (3) of this section, or if a manager of a corporate licensee would be ineligible to receive a license under this section for any reason. This subdivision shall not apply to railroad licenses, (11) a person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, (12) a person who does not own the premises for which a license is sought or does not have a lease or combination of leases on such premises for the full period for which the license is to be issued, (13) except as provided in this subdivision, an applicant whose spouse is ineligible under this section to receive and hold a liquor license. Such applicant shall become eligible for a liquor license only if the commission finds from the evidence that the public interest will not be infringed upon if such license is granted. It shall be prima facie evidence that when a spouse is ineligible to receive a liquor license the applicant is also ineligible to receive a liquor license. Such prima facie evidence shall be overcome if it is shown to the satisfaction of the commission (a) that the licensed business will be the sole property of the applicant and (b) that such licensed premises will be properly operated, (14) a person seeking a license for premises which do not meet standards for fire safety as established

by the State Fire Marshal, (15) a law enforcement officer, except that this subdivision shall not prohibit a law enforcement officer from holding membership in any nonprofit organization holding a liquor license or from participating in any manner in the management or administration of a nonprofit organization, or (16) a person less than twenty-one years of age.

When a trustee is the licensee, the beneficiary or beneficiaries of the trust shall comply with the requirements of this section, but nothing in this section shall prohibit any such beneficiary from being a minor or a person who is mentally incompetent.

### **FALSIFICATION OF APPLICATION**

**010.01** No applicant for a liquor license, or partner, principal, agent or employee of any applicant for a liquor license shall provide false or misleading information to the Nebraska Liquor Control Commission, its executive director, or employees. Any violation of this provision may result in denial of application for a liquor license or, in the event that a license has already been issued, suspension, cancellation or revocation of such license.

### **FALSIFICATION OF INFORMATION**

**011.01** No licensee or partner, principal, agent or employee of any licensee shall provide false or misleading information to the Nebraska Liquor Control Commission, its executive director or employees. Any violation of this provision may result in suspension, cancellation or revocation of such license.

