



City of Grand Island

Tuesday, November 25, 2014

Council Session

Item E-2

**Public Hearing on Request from Joel Poppe dba Lucky 7 Saloon,
418 West 4th Street for a Class “C” Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: November 25, 2014

Subject: Public Hearing on Request from Joel Poppe dba Lucky 7 Saloon, 418 West 4th Street for a Class “C” Liquor License

Item #'s: E-2 & I-2

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

Joel Poppe dba Lucky 7 Saloon, 418 West 4th Street 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.

After reviewing the Police Department report (see attached) it is recommended that the Council deny this application due to a false application and issues with liquor being in the business in violation of the Temporary Operating Permit (TOP).

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 Joel Poppe dba Lucky 7 Saloon, 418 West 4th Street for a Class "C" Liquor License based on a false application and issues with liquor being in the business in violation of the Temporary Operating Permit (TOP).

11/20/14
16:05

Grand Island Police Department
LAW INCIDENT TABLE

Page: 450
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City : Grand Island
 Occurred after : 08:10:00 11/04/2014
 Occurred before : 08:10:00 11/04/2014
 When reported : 08:10:00 11/04/2014
 Date disposition declared : 11/18/2014
 Incident number : L14111594
 Primary incident number :
 Incident nature : Liquor Lic Inv Liquor Lic Inv
 Incident address : 418 4th St W
 State abbreviation : NE
 ZIP Code : 68801
 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 : RaNae
 Geobase address ID : 12876
 Long-term call ID :
 Clearance Code : CL CL Case Closed
 Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
NM	40763	11/20/14	Cargill, Ruby Mae	Contacted
NM	101470	11/18/14	Arriaza-Garrido, Hilda Veronic	Joel's Wife
NM	109899	11/18/14	Poppe, Joel Edward	Owner/Manager
NM	192974	11/18/14	Lucky 7 Bar,	Business

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code : Miscellaneous

 1 LT03 LT03 Bar/Night Club

IMAGE CODES FOR INCIDENT:

Seq Imag Image code for a users description field

 1 DOC DOCUMENT mobile report

LAW INCIDENT NARRATIVE:

Liquor License Investigation

I Received a Copy of a Class C (beer, wine, distilled spirits on and off sale) Individual Liquor License Application from Joel Poppe for the Lucky 7 Saloon.

LAW INCIDENT OFFENSES DETAIL:

Se	Offe	Offense code	Arson	Dama
1	AOFF	AOFF Alcohol Offense		0.00

LAW INCIDENT RESPONDERS DETAIL:

Se	Responding offi	Unit n	Unit number
1	Vitera D	318	Vitera D

LAW SUPPLEMENTAL NARRATIVE:

Seq	Name	Date
1	Vitera D	12:59:30 11/18/2014

Grand Island Police Department
Supplemental Report

Date, Time: Tue Nov 18 12:59:41 CST 2014
Reporting Officer: Vitera
Unit- CID

I received a copy of a Class C (beer, wine, distilled spirits, on and off sale) Individual Retail Liquor License application from Joel Poppe for Lucky 7 Saloon. Joel is married to Hilda Arriaza-Garrido. Hilda signed a Spousal Affidavit of Non-Participation form. According to ICE, Hilda is a Permanent Resident of the United States.

While reading the application, I noted that Joel disclosed a disturbing the peace conviction in Grand Island in January of 2013 along with a speeding conviction in Grant, NE in 2001, and a DUI conviction in Alliance, NE in 1993. Hilda did not disclose any convictions. Other points of interest in the application are that Joel is filing for a Temporary Operating Permit (TOP), he is not borrowing any money to establish and/or operate the business, he's never had a liquor license before, and he has lived in Grand Island since at least 2003. The application also asks where the applicant's spouse has lived for the last ten years, but Joel didn't fill that out.

I checked Joel and Hilda through Spillman (GIPD database) and the Nebraska Criminal Justice Information System (NCJIS). Spillman shows that Hilda was cited for driving left of center on 6/23/12. She was referred

for 3rd degree domestic assault on 7/21/12, cited for shoplifting on 9/14/13, and cited for speeding on 4/7/14. Spillman also shows that Hilda had a protection order against Joel between August of 2012 and November of 2012. Joel was served with the order at an address in Henderson, NE.

NCJIS shows that Hilda was convicted of the "left of center" ticket and the speeding charge listed in Spillman. NCJIS also shows that she was convicted of the shoplifting charge but not the domestic assault. Additional convictions listed in NCJIS are: driving without lights and a child restraint charge on 4/5/12, speeding on 4/20/07, speeding on 6/1/09, and speeding on 8/24/09.

Spillman shows that Joel was arrested for 3rd degree domestic assault on 7/21/12. It also shows that he had a warrant issued for his arrest on 1/2/13 for disturbing the peace, but it was recalled on 1/9/13. NCJIS doesn't show any undisclosed convictions for Joel. It appears that the domestic assault arrest was plead down to the disturbing the peace conviction.

In addition to checking Joel and Hilda through Spillman and NCJIS, I checked to see if either of them had any outstanding arrest warrants and to see if their driver's license is valid. Neither have any arrest warrants, and they each have a valid Nebraska driver's license.

I did a general Internet search for Joel and Hilda but couldn't pinpoint anything to either one of them other than a MyLife.com post for Joel which indicates he lived in Grand Island in 2001 and then again from 2007 until 2013. Since Joel was served with a protection order in Henderson, I'm wondering if he has lived elsewhere other than what he listed on his application. I also checked a paid law enforcement-only database for Joel and Hilda. Hilda didn't have anything listed that would be considered detrimental to the application. Joel showed a bankruptcy in 2003 and a civil judgment against him on 12/27 2002 for \$67.

I called General Collection Agency in Grand Island which was responsible for the civil judgment against Joel. I was told that all the money was paid, and Joel was released from liability on 8/21/06. I will ask him why it took him almost four years to satisfy a \$67 judgment.

On 11/19/14, NSP Investigator Fiala and I met with Joel at the Lucky 7 Saloon. Joel said that Hilda was originally going to help with the bar, but since there was an issue with her being a resident and not a citizen of the U.S., she signed a Spousal Affidavit of Non Participation agreement. Since she isn't going to be participating in the bar business, Joel didn't think he needed to include her convictions or where she's lived for the past ten years on the application. I went over some of Hilda's convictions, and Joel said he didn't realize she was convicted of shoplifting last year. About ten minutes later, he said he did remember Hilda talking about the shoplifting. She told him that someone framed her and put the items in her purse.

Joel said he is going to keep his full time job at Chief and plans on opening the bar Thursday through Sunday. He also said the he is considering having a DJ and at times bringing in live entertainment. He

didn't have any plans for security at this time. I made some suggestions to him. I asked Joel about the \$67 civil judgment against him and why it took him almost four years to pay it off. He said that he didn't remember having that judgment against him. I asked him why the protection order served on him was served in Henderson. He said he stayed there with his mother for a few months.

When Investigator Fiala and I first entered the bar to speak with Joel, Investigator Fiala immediately noticed liquor behind the bar. Joel had sent a letter to the Nebraska Liquor Control Commission (NLCC) saying that Ruby (owner of the building and prior liquor license for Lucky 7) took all of the alcohol out of the building. Joel does have a TOP which would allow him to sell the liquor. However, during our interview, Joel said that since he's been open for business, he has only been selling beer that he bought from H & H Distributing. He said that he has not purchased any liquor from a wholesaler. Joel said that Ruby must have brought the alcohol back into building. Ruby told Joel she had an inventory of about \$5,000 worth of alcohol that she wanted to sell to him. Joel advised that the rest of the alcohol was stored in a locked room in the basement (contrary to what he said in his letter to the NLCC), and he didn't have a key for it. Since Ruby's inventory of alcohol wasn't included in the purchase agreement, Joel can't buy Ruby's leftover inventory because she is not a wholesaler.

Investigator Fiala told Joel that it had to be removed. I called Ruby Cargill on 11/20/14. Ruby said that she never removed her alcohol from the building. She said that it is stored in a locked room in the basement. She also said that she didn't leave any alcohol behind the bar or ever put any alcohol back behind the bar once she originally stored her inventory in the basement.

After speaking with Ruby, Investigator Fiala and I contacted Joel again while he was working at Chief Industries and confronted him about the alcohol behind the bar that he previously claimed he didn't know where it had come from and guessed that Ruby put it back there. During this interview, Joel said that he personally observed Ruby and another male and female bring the alcohol back into the bar last week possibly on Veterans' Day. I asked Joel why he wasn't buying hard liquor from a wholesaler and selling it? He said that he doesn't know anything about mixing drinks and just wanted to get the doors open, so he only bought beer to sale.

Since Joel's statement about seeing Ruby drop off the alcohol directly conflicted with what Ruby had told me a couple of hours ago over the phone, I called Ruby back. This time, Ruby told me that she and her son did take about 20-25 bottles of alcohol from her house and take them back to the bar. She said they were put in the basement in the locked room. Ruby said that Joel wanted to buy the rest of her inventory. I told Ruby that Joel can't purchase her leftover alcohol at this time since it wasn't part of the original purchase agreement, and he has to buy his alcohol from a wholesaler. I then told Investigator Fiala and Joel that his version of why the liquor was in the bar mostly checked out. I say "mostly" because we still don't know how it got behind the bar and on the shelf. Also, after speaking with Joel, Investigator Fiala and I went back

to Lucky 7. Investigator Fiala looked in their trash in the alley behind the bar and located some empty grapefruit juice bottles. It's hard to believe that Joel is selling straight juice with no alcohol mixed in it.

Prior to interviewing Joel the second time, Investigator Fiala told me that Joel had sent in two previous applications that were sent back by the NLCC. Investigator Fiala spoke to someone at the NLCC about the other two applications and was told that Joel didn't include Hilda's convictions on either one of them. I told Joel that his prior explanation of not including Hilda's convictions on his application because she filled out a non-participation form didn't make sense because he filled out two previous applications that were rejected by the NLCC, and he didn't disclose her convictions on either one of them, and she hadn't filled out the non-participation agreement at that time.

All in all, the Grand Island Police Department feels the council should not give local approval to this application because it's technically false due to Joel not disclosing Hilda's convictions three different times and coming up with a reason why he didn't that was refuted by Hilda not having a non-participation agreement when the first two applications were filled out. Also, the issue of the liquor being in the business, how it got behind the bar, whether he bought it from Ruby or used it and sold it, is a violation of his TOP since it wasn't part of the original purchase agreement and not purchased from a wholesaler.

53-175. Liquor; acquisition from other than licensed dealer; when unlawful; limitation; records.

It shall be unlawful for any person to purchase, receive, acquire, accept, or possess any alcoholic liquor acquired from any person other than one duly licensed to handle alcoholic liquor under the Nebraska Liquor Control Act unless within the specific exemptions or exceptions provided in the act. No licensed retailer of alcoholic liquor shall purchase such liquor other than from a licensed wholesaler who has his or her place of business within this state, except that a licensed retailer may purchase alcoholic liquor other than beer or wine from one or more retailers licensed to sell alcoholic liquor for consumption off the premises if the seller has the required federal wholesaler's basic permit and federal wholesale liquor dealer's special tax stamp and has filed proof of possession of the permit and tax stamp with the commission prior to engaging in any such sales for resale. Retailers making such sales and retailers making such purchases from retailers shall keep accurate records of such sales and purchases and shall report all such sales and purchases on a quarterly basis on forms and in such manner as prescribed by the commission. No licensed retailer shall purchase in the aggregate more than three hundred dollars of alcoholic liquor as allowed under this section in any calendar year. Nothing in this section shall prohibit the sale or exchange among collectors of commemorative bottles or uniquely designed decanters which contain alcoholic liquor.

TRANSFER OF STOCK OF TERMINATED LICENSE

003.01 When a licensee has discontinued business under his license and his license has been terminated, he may apply in writing to the Commission for permission to transfer his stock of alcoholic liquors to another qualified licensee. He shall furnish the Commission with an inventory of the liquors contemplated in such transfer.

003.02 The licensee who desires to purchase such stock of liquor shall also apply in writing to the Commission for permission to make such purchase and he shall report to the Commission in writing the quantity, brands, and types of such liquor purchased and the address to which it was actually delivered after the purchase.

