



City of Grand Island

Tuesday, November 10, 2009

Council Session

Item E3

**Public Hearing on Request from James Fox dba Husker Hut, 1403
South Eddy Street for a Class "I" Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: November 10, 2009

Subject: Public Hearing on Request from James Fox dba Husker Hut, 1403 South Eddy Street for a Class "T" Liquor License

Item #'s: E-3 & I-3

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

James Fox dba Husker Hut, 1403 South Eddy Street has submitted an application for a Class "T" Liquor License. A Class "T" Liquor License allows for the sale of alcohol on sale only 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.

The Police Department report (see attached) recommends Council deny this application based on the Nebraska Liquor Control Act (Part II Chapter 2 Section 010.01) for a false application and Section 53-125 for a person who is not of good character and reputation in the community in which he or she resides.

The City Clerk was informed no inspections have been requested by Mr. Fox as required in a letter mailed on October 23, 2009 (see attached). Based on the Grand Island City Code Chapter 4 for failure to request inspections and/or complete interviews it is the recommendation of the City Clerk that Council deny this application.

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 the application.

Sample Motion

Move to deny the application of James Fox dba Husker Hut, 1403 South Eddy Street for a Class 'T' Liquor License based on the following:

1. False application – Nebraska Liquor Control Act (Part II Chapter 2, Section 010.01)
2. Not of good character and reputation in the community – Nebraska Liquor Control Rules and Regulations Section 53-125
3. Failure to request inspections and/or complete interviews – Grand Island City Code Chapter 4

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Grand Island Police Department
LAW INCIDENT TABLE

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City : Grand Island
Occurred after : 16:07:26 10/29/2009
Occurred before : 16:07:26 10/29/2009
When reported : 16:07:26 10/29/2009
Date disposition declared : 10/29/2009
Incident number : L09103696
Primary incident number :
Incident nature : Liquor Lic Inv Liquor License Investigation
Incident address : 1403 Eddy St S
State abbreviation : NE
ZIP Code : 68801
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitera D
How received : T Telephone
Agency code : GIPD Grand Island Police Department
Responsible officer : Vitera D
Offense as Taken :
Offense as Observed :
Disposition : ACT Active
Misc. number :
Geobase address ID : 13842
Long-term call ID :
Clearance Code : CL Case Closed
Judicial Status : NCI Non-criminal Incident

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INVOLVEMENTS:

Px	Record #	Date	Description	Relationship
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LAW INCIDENT CIRCUMSTANCES:

Se	Circu	Circumstance code	Miscellaneous
1	LT03	Bar/Night Club	

LAW INCIDENT NARRATIVE:

Liquor License Investigation on "The Hut"

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	10:10:03 11/04/2009

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Grand Island Police Department
Supplemental Report

In reviewing James Fox's application, I found that he disclosed three traffic violations. One in 2003, one in 2006, and one in 2009. I checked James through Spillman and did not find an entry. When I checked James through NCJIS, I found numerous undisclosed traffic convictions: 1. 5/11/00- traffic control device. 2. 6/9/00- speeding and no operator's license. 3. 11/14/00- no registration and violation of motor carrier safety regulations (misuse Farm Local "A" plate). 4. 2/28/01- speeding. 5. 5/12/01- no registration 6. 8/2/01- violate motor carrier safety regulations 7. 1/26/05- muffler violation 8. 3/15/05- Noise/smoke violation. James does not have any warrants for his arrest, and his license is valid.

On the application, it clearly asks "Has anyone who is a party to this application, or their spouse, ever been convicted of or plead guilty to any charge. Charge means any charge alleging a felony, misdemeanor, violation of a federal or state law, a violation of a local law, ordinance or resolution."

James' failure to disclose his traffic convictions technically makes the application false according to the Nebraska Liquor Control Act (Part II Chapter 2 Section 010.01). The undisclosed convictions would fall under state law or local ordinance. Either way, the convictions are either an infraction or a misdemeanor that does not rise to the level of a Class I Misdemeanor in a specified crime under Nebraska State Statute Chapter 28 that would automatically nullify the liquor license.

James has a Husker Hut in Atlanta, NE which is in Phelps County. On 11/3/09, I spoke to a deputy with the Phelps County Sheriff's Office. I was told that James is not what you would call "law enforcement friendly." He has come running out of his bar and yelled at deputies on traffic stops accusing them of harassing his customers. One person also came forward and told Phelps County authorities that James was using meth. It was never proven. Other than his attitude towards law enforcement and the possibility of drug use, I was told that they don't really have any problems at his bar. However, keep in mind that according to the 2000 census, the Village of Atlanta, NE had only 130 people.

James also used to have a liquor license in Harlan County. I spoke to two deputies there and was given a similar report from what I learned from Phelps County. I was told of an incident where James went to another man's house, kicked his door in and assaulted him. All parties involved later agreed that it was a misunderstanding and no charges were ever filed. I was told that James' rapport with law enforcement is not good, but they had very few problems at his business.

I checked the NLCC web site and found that James has had the Husker Hut in Atlanta for over twelve years. I could only find one violation of selling to a minor where the license was suspended for ten days.

On 11/4/09, I tried calling James three times using the number he provided on the application. Each time, I got a fax machine.

All in all, the Grand Island Police Department recommends that the City of Grand Island deny the liquor license for the Husker Hut. The application is technically false since James didn't disclose all of his traffic convictions. In addition, the phone number is not valid, he lives in a different county, and isn't readily available to me for this investigation. Finally, I received

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unfavorable reports from law enforcement in two counties about his character and standing in the community where he was living at the time. 53-125 of the Nebraska Liquor Control Act states in part that, "No license of any kind shall be issued to a person who is not of good character and reputation in the community in which he or she resides."

Date, Time: Wed Nov 04 12:05:53 CST 2009
Reporting Officer: Vitera
Unit #: 865



*Working Together for a
Better Tomorrow. Today.*

October 23, 2009

**Husker Hut
Attn: Jim Fox
PO Box 35
Atlanta NE 68923**

RE: Request from James Fox dba Husker Hut, 1403 South Eddy Street, Grand Island, Nebraska for a Class "I" Liquor License

Dear Mr. Fox:

A public hearing for the application of your request for a Class "I" Liquor License has been set before the City Council at **7:00 p.m., Tuesday, November 10, 2009 at City Hall, 100 East First Street**, during the regular City Council session. Chapter 4, Section 4 of City Code states, "It shall be the duty of every applicant for an alcoholic liquor license, whose application is pending before the Council, to appear before the Council personally (if a partnership, at least one of the partners; and if a corporation at least one managing officer thereof) on the date of the hearing upon the propriety of granting or recommending such license, provided for by Section 53-134, R.R.S. 1943, of said Liquor Control Act, to answer such questions as may be asked him or her in determining the facts required by law and this chapter, concerning the propriety of granting such license, and a failure to so appear without reasonable excuse, shall be grounds for denying such application". During the Public Hearing, the City Clerk will ask if the applicant has any exhibits he/she would like to offer for the record. The City Clerk will then ask if there are any members of the audience who would like to speak in support of the application and any who would like to speak in opposition to the application. When there are no further comments, the Public Hearing will close. The Council will vote to approve or reject the application during the "Resolution" segment of the Council Meeting.

A copy of Chapter 4, City Code is enclosed for your reference. **You need to contact the following departments and personnel for inspections and interviews two weeks prior to the hearing:**

Building Department	Craig Lewis	385-5325
Fire Department	Fred Hotz	385-5444, ext 228
Health Department	Jeremy Collinson	385-5175, ext 127

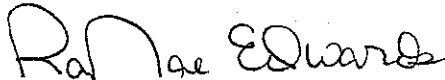
Failure to request inspections and/or complete interviews will result in a recommendation of denial from the staff to the City Council.

I also might note that should your license be approved by the City Council it will be your responsibility to take and pass a state approved alcohol server/seller training course before we can issue the license. Courses are offered through the Nebraska State Patrol or on-line through the Nebraska Liquor Control Commission located at www.lcc.ne.gov. Click on "Legal" and then "Training". You will need to have your liquor license number to sign in. The Central Nebraska Council on Alcoholism and Addiction located at 219 West 2nd Street also offers training. Contact Randy See or Rod Felton at (308) 385-5520 to schedule an appointment. If you should have any questions feel free to contact me at (308) 385-5444 Ext. 111.

If you should have any questions feel free to contact me at (308) 385-5444 Ext. 111.

Sincerely,

CITY OF GRAND ISLAND



RaNae Edwards
City Clerk

Enc.

cc: Building Department
Fire Department
Health Department