



# City of Grand Island

Tuesday, November 24, 2009

Council Session

## Item E1

**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 24, 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-1 & I-1

**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 and supplemental (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.

### **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 "I" 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

11/04/09  
16:24

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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16:24

Grand Island Police Department  
LAW INCIDENT TABLE

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Grand Island Police Department  
LAW INCIDENT TABLE

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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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LAW INCIDENT TABLE

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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

11/16/09  
10:39

Grand Island Police Department  
LAW SUPPLEMENTAL NARRATIVE

Incident number : L09103696  
Sequence number : 2  
Name : Vitera D  
Date : 14:24:09 11/12/2009  
Narrative : (see below)

Grand Island Police Department  
Supplemental Report

On 11/12/09, James Fox called me. He gave me his cell phone number. He denied ever having anything to do with illegal drugs. He said the instance where he was accused of running out and shouting at a deputy during a traffic stop happened differently. James advised that a woman who had been in a domestic disturbance showed up at his bar. Her significant other found her there. Law enforcement arrived to handle the situation. James said he asked the deputies to take the two people involved in the domestic disturbance and leave since the bar was not involved.

James also explained the incident where he "kicked" down the door of another man's house. James said the man owed money. James had tried calling "50" times and knocking on his door "20" times. Since he couldn't get ahold of the man, he tried the door knob one day and walked in. He admitted that he shouldn't have done that. No charges were filed.

James also admitted that he has had numerous traffic convictions in the past that he didn't put on the application. He asked a lawyer to help him fill out the application, but the lawyer said it would cost him \$500. James filled out the application and probably didn't read it as carefully as he should have.

In reviewing the application, under the section where it asks for the name of the person or firm helping with the application, Michael C. Klein with Anderson, Klein, Swan, and Brewster is filled in.

I spoke to Michael Klein on 11/16/09. After introducing myself, I asked Michael if he helped James Fox fill out a liquor license application. Michael said something similar to, "What's your question officer?" I explained to him that James told me that he approached an attorney who is a friend of his for help in filling out the application but was told it would cost him \$500. James said he filled the application out himself. The application states that Michael Klein assisted. I asked Michael again who filled out the application. He said, "What's your question officer?" I told him that someone was being dishonest, and if Michael didn't help with the application, the application was false. Michael said he was going to end the conversation with me and hung up the phone.

If James Fox continues with the application, the Grand Island Police Department recommends that the City Council deny the application. With unfavorable reports from law enforcement in the communities where James has had liquor licenses, a false application, and his and his attorney's character coming into question, there are too many red flags with this application.

Date, Time: Mon Nov 16 10:35:21 CST 2009  
Reporting Officer: Vitera  
Unit #: 865

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