



City of Grand Island

Tuesday, December 07, 2010

Council Session

Item E2

**Public Hearing on Request from Friesen Management, Inc. dba
Sam and Louie's NYP, 928 Concord Avenue for a Class "C"
Liquor License**

Staff Contact: RaNae Edwards

Council Agenda Memo

From: RaNae Edwards, City Clerk

Meeting: December 7, 2010

Subject: Public Hearing on Request from Friesen Management, Inc. dba Sam and Louie's NYP, 928 Concord Avenue 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

Friesen Management, Inc. dba Sam and Louie's NYP, 928 Concord 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.

Also submitted with this application was a Liquor Manger Designation request from Donald Friesen, 4030 W. Husker Highway.

Donald Friesen stated on the application that he had been convicted of a Class I Misdemeanor. Nebraska State Statute 53-125 says that a liquor license shall not be issued to anyone who has plead guilty or been convicted of a Class I Misdemeanor under Chapter 28, Article 3, 4, 7, 8, 10, 11, and 12. Donald's conviction is a Class I misdemeanor under Chapter 28, Article 3.

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 Friesen Management, Inc. dba Sam and Louie's NYP, 928 Concord Avenue for a Class "C" Liquor License based on the conviction of Donald Friesen for a Class I Misdemeanor and the Police Department Report.

12/01/10
14:12

Grand Island Police Department
LAW INCIDENT TABLE

450
Page: 1

City : Grand Island
Occurred after : 13:27:07 11/22/2010
Occurred before : 13:27:07 11/22/2010
When reported : 13:27:07 11/22/2010
Date disposition declared : 11/22/2010
Incident number : L10112571
Primary incident number :
Incident nature : Liquor Lic Inv Liquor License Investigation
Incident address : 928 Concord Ave
State abbreviation : NE
ZIP Code : 68803
Contact or caller :
Complainant name number :
Area location code : PCID Police - CID
Received by : Vitara D
How received : T Telephone
Agency code : GIPD Grand Island Police Department
Responsible officer : Vitara D
Offense as Taken :
Offense as Observed :
Disposition : ACT Active
Misc. number : RaNae
Geobase address ID : 34984
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
NM	29757	12/01/10	Friesen, Donald L	Owner
NM	112438	12/01/10	Friesen, Lanette M	Owner
NM	161877	12/01/10	Sam & Louie's NYP,	Business

LAW INCIDENT CIRCUMSTANCES:

Se Circu Circumstance code Miscellaneous

1 LT21 Restaurant

LAW INCIDENT NARRATIVE:

I Received a Copy of a Liquor License Application for Sam & Louie's NYP and a Copy of a Liquor Manager Application from Donald Friesen.

LAW INCIDENT RESPONDERS DETAIL:

Se Responding offi Unit n Unit number

1 Vitera D 318 Vitera D

12/01/10 Grand Island Police Department 450
14:12 LAW INCIDENT TABLE Page: 2

LAW SUPPLEMENTAL NARRATIVE:

Seq Name Date

1 Vitera D 11:04:52 12/01/2010

Grand Island Police Department
Supplemental Report

Date, Time: Wed Dec 01 11:05:07 CST 2010
Reporting Officer: Vitera
Unit- CID

According to this application, Donald and Lanette Friesen are the owners of this restaurant who are seeking a Class C Liquor License (beer, wine, distilled spirts, on & off sale). The first thing that jumped out at me is that Donald disclosed a conviction for Third Degree Assault (among other things). I checked NCJIS and confirmed that Donald plead guilty to Third Degree Assault (28-310, CL I MO). Nebraska State Statue 53-125 says that a liquor license shall not be issued to anyone who has plead guilty or been convicted of a Class I Misdemeanor under Chapter 28, Article 3, 4, 7, 8, 10, 11, 12. Donald's conviction is a Class I Misdemeanor under Chapter 28, Article 3. See (5) in 53-125 below.

Nebraska Revised Statute 53-125

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.

Donald's assault conviction automatically disqualifies him from receiving a liquor license. The GIPD suggests that the Council recommend a denial of this liquor license application.