

For the Council Meeting of: July 30, 2007

Agenda Item No: 4 (a)

TO: Mayor and City Council

THROUGH: Councilor Laura Tesler
Chair of the Board

FROM: City Liquor Application Investigation Board

SUBJECT: OLCC Application - The Sports Stop and Good Times Lounge

ISSUE

Should the City Council receive the report from the City Liquor Application Investigation Board and schedule a public hearing to consider providing an unfavorable recommendation to the Oregon Liquor Control Commission (OLCC) for the liquor license application submitted for the Sport Stop and Good Times Lounge located at 189 Liberty St. NE in Salem, Oregon?

RECOMMENDATION

City Council should receive this report and set a public hearing for August 6, 2007 to consider providing an unfavorable recommendation to the OLCC for the liquor license application submitted for the Sports Stop and Good Times Lounge.

BACKGROUND

The Sports Stop and Good Times Lounge submitted an application to OLCC on June 22, 2007, for a new outlet license at 189 Liberty St. NE. Subsequent to that application, Councilor Laura Tesler requested a Liquor License Application Investigation Board convene to discuss the application. That board met on July 23, 2007.

FACTS AND FINDINGS

1. ORS 471.166(1) provides the OLCC "may take into consideration" the written recommendation of a local governing body regarding the issuance or renewal of a liquor license.

2. Under Council Rule 17, the Liquor License Application Investigation Board, for a specific application, is comprised of the councilor for the ward in which the applicant's premises is located, and the councilor for the adjacent ward nearest the location of the premises. Upon receipt of a report from the Board to issue an unfavorable recommendation, City Council shall set a public hearing to determine the application.
3. The Board for the Sports Stop and Good Times Lounge application was comprised of Councilor Telser, as Chair, and Councilor Nanke. The Chief of Police and City Attorney serve as ex officio members. In the absence of the Chief of Police, Deputy Chief Steve Bellshaw was present. The Board convened on July 23, 2007, and determined that this application should be set for a hearing in front of the entire Council to decide if an unfavorable recommendation should be forwarded to the OLCC.
4. OAR 845-005-038(3) provides that "for an unfavorable recommendation of a local body to be valid, the grounds must be found in the license refusal basis of ORS 471.313(4), ORS 471.313(5), OAR 845-005-0302, oar 845-005-0325 or OAR 845-005-0326, or the license restriction basis of OAR 845-005-0355." Therefore, in reviewing an application for purposes of making an unfavorable recommendation, the same criteria must be used by the City Council that would be used by the OLCC to deny or restrict a license.
5. OAR 845-005-0308(3) requires that an unfavorable recommendation "must be supported by reliable factual information." For purposes of making an unfavorable recommendation, OAR 845-005-0308(4) provides that "reliable factual information" includes "personal observations or activities in or around the proposed liquor location, as opposed to opinion, hearsay, feelings, beliefs or speculation."
6. The Board found that Council should consider making an unfavorable recommendation on the basis of ORS 471.313(4)(b), (f),(i), 471.313(5) and OAR 845-005-0325 (4), (5) and (6) and 845-005-0355.
7. ORS 471.313(4)(i) provides that OLCC may deny an application for a license if the applicant "[i]s not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed."

The Board heard of a "Fraud" case, investigated by the Marion County Sheriff's Office, listing the applicant as the suspect. The Board heard of a letter from a bank teller stating a business check in the name of the applicant's former business would not be cashed due to the applicant's name not being written on the check. The check was later cashed at a different bank with the applicant's name written on the check.

The Board heard testimony from the applicant of a previous bankruptcy which occurred in January, 2005.

8. ORS 471.313(4)(f) provides that OLCC may deny an application for a license if the applicant:

“ [i]s not of good repute and moral character.”

OAR 845-005-0325 (5) states the Commission will deny a license, unless the applicant shows good cause that overcomes the criterion involved, if:

“The applicant has been convicted of a felony when there is a relationship between the facts that support the conviction and applicants fitness to exercise the license privileges. When there is a relationship between the applicants fitness and the felony, the Commission considers any intervening circumstances since the commission of the crime in determining whether the applicant is an acceptable future compliance risk.”

The applicant was arrested on a felony charge of lewd or lascivious acts with a child under the age of 14. A subsequent plea agreement was reached where the applicant plead guilty to a misdemeanor charge. While not a felony conviction, it speaks to the moral character of the applicant. In addition, applicant is a registered sex offender and cannot provide documentation that he has completed all required treatment classes as required by the courts.

The applicant has been involved in five investigations by law enforcement in the past two years. These cases involve a harassment, fraud, misuse of 9-1-1, prowler call, and disturbance. In one police report the applicant was referred to as “irrational” by police and subsequently arrested for misuse of 9-1-1.

As stated above, the Board heard of a “Fraud” case investigated by the Marion County Sheriff’s Office listing the applicant as the suspect. The Board heard of a letter from a bank teller stating that a business check in the name of the applicant’s former business would not be cashed due to the applicant’s name not being written on the check. The check was later cashed at a different bank with the applicant’s name written on the check.

On July 25, 2007, Officer Kelly Frederick contacted the real estate agency located in Salem, Oregon regarding the real estate history of Mr. Lee. Joyce Yates provided documentation verifying six separate administrative actions/investigations regarding Mr. Lee’s real estate practices and standing with the real estate board. The first action indicated a probationary period for one year due to Mr. Lee’s criminal history, having been convicted of a misdemeanor sex crime. One of the actions revealed the investigation was closed with no action taken. There were three actions that resulted in stipulated reprimands and one action that resulted in a civil penalty of \$300.00. Mr. Lee is currently in good standing with the Real Estate Board.

CONCLUSION

As a result of the foregoing, the Board recommends that a full hearing on the application of the Sports Stop and Good Times Lounge be conducted before Council and determine whether an unfavorable recommendation to the OLCC should be issued.

Laura Tesler, Chair
Liquor License Application Investigation Board