

LICENSE HEARING MINUTES
Tracks Bar & Grill, 1091 Rice Street
Monday, April 30, 2018; 10:00 a.m.
Room 330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 10:00 a.m.

Staff Present: Jeff Fischbach, Department of Safety and Inspections (DSI)

Licensee: Dao Hoang, Applicant/Owner

License Application: Liquor On Sale - 100 seats or Less, Liquor On Sale - Sunday, Liquor On Sale - 2 AM closing, Liquor - Outdoor Service Area (Patio), Entertainment (A), Gambling Location, Cigarette/Tobacco

Other(s) Present: Kerri Antrim, Executive Director for District 6 Planning Council

Legislative Hearing Officer Nhia Vang gave the following information about the hearing: This is an informal legislative hearing for a license application. This license application required a Class N notification to inform neighbors and the District Council about the application and provide them with an opportunity to submit comments. The City received a letter of concern/objection, which triggered this hearing.

The hearing will proceed as follows: DSI staff will explain their review of the application, and state their recommendation. The applicant will be asked to discuss their business plan. Members of the community will be invited to testify as to whether they object to or support the license application. At the end of the hearing, Ms. Vang will develop a recommendation for the City Council to consider. Her recommendation will be on the Consent Agenda at the City Council meeting.

There are three possible results from this hearing: 1) a recommendation that the City Council issue this license without any conditions; 2) a recommendation that the City Council issue this license with agreed upon conditions; or 3) a recommendation that the City Council not issue this license but refer it to the city attorney to take an adverse action on the application, which could involve review by an administrative law judge. The City Council is the final authority on whether the license is approved or denied.

Minutes:

Jeffrey Fischbach, Department of Safety and Inspections (DSI) gave a staff report. He reviewed the conditions that were new to the business: condition 1, related to security cameras, had been brought into accordance with DSI's standardized condition, requiring that the security camera plan be reviewed and approved by police. He read conditions 9 and 10 (see below) and said condition 8 was added for Entertainment A. He said DSI received a letter from the North End Neighborhood Association recommending denial of the 2:00 a.m. license. He said they supported a license subject to the establishment closing at 1:00 a.m. closing, and recommended a modification of condition 2

to remove the requirement that security be licensed and bonded, and removal of condition 3. He said Zoning approved, and DSI recommended approval of the license with the conditions as follows:

1. Licensee will create a video surveillance camera and lighting placement plan (video surveillance plan) for the interior and exterior of the licensed premises. Licensee will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, licensee will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. Licensee will retain surveillance video for a minimum of thirty (30) days. If an incident is deemed serious by SPPD, licensee shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, Licensee shall have the technology, materials and staff available to immediately make the copy. In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours.
2. Licensed, bonded and clearly identifiable, uniformed Security personnel shall be assigned to each entrance starting at 10PM on Thursdays, Fridays And Saturdays, or whenever entertainment is provided. Security shall remain until all patrons have left the premises (including the patio and parking lot areas).
3. Security shall "wand" (using a metal detector) each patron and check all handbags and packages carried by patrons. Security shall verify the age of patrons by checking state or federally issued identification cards. (no picture I.D. no entrance) Customers re-entering the establishment shall undergo the same security measures as customers entering the establishment for the first time.
4. Last call will be given no later than 1:30a.m. License holder shall not allow new patrons to enter the establishment after 1:30a.m., consumption of alcohol to be discontinued before 2:00a.m. The establishment will be closed and all patrons and staff gone by 2:30 a.m. from the premises (including the patio and parking lot areas).
5. The food and beverage service to the patio must stop at 10:00 p.m. each night of the week. Patron will be allowed to smoke on the patio until 2:00 a.m.
6. No outdoor food and/or beverage preparation is allowed on the outdoor patio without prior written approval from DSI.
7. Licensee will post signs in the patio encouraging patrons to respect the neighborhood by limiting noise in the patio area as much as possible.
8. Per City of Saint Paul Legislative Code 411.02, the definition of Entertainment A is "Amplified or nonamplified music and/or singing by performers without limitation as to number, and group singing participated in by patrons of the establishment." (includes karaoke). Entertainment A license does not allow for patron and or performance dances.
9. Any outdoor activities related to the outdoor seating area shall comply with applicable State and Local rules and regulations, including but not limited to Chapter293 Noise Regulations of the City of Saint Paul Legislative Code.

10. Licensee agrees to take appropriate action(s) to ensure that the sale, display and/or consumption of alcoholic beverages is contained within the approved indoor and outdoor patio service area as per the approved plan on file with DSI.

In response to a question from Ms. Vang, he clarified that the only change was the addition of the Entertainment A license, and Zoning reviewed it just to make sure it was still all the same.

Ms. Vang asked whether there was a copy of the approved site plan referenced in condition 10. Mr. Fischbach said it was the one attached to the staff report. He said there were no changes and that condition 10 was to ensure that alcohol couldn't leave the patio area or the indoor area.

Ms. Vang asked Ms. Hoang to discuss her business plan, and whether she had any questions about the conditions placed on the license.

Ms. Hoang said it was a bar and restaurant, mostly to provide food to the establishment. She said security had been discussed at the district council meeting and she was okay with providing security, but licensed, bonded security was too expensive for her business. She said she was okay to close at 1:00 a.m. because she wanted to run her business as safe as possible. She said she didn't want people to look in and think it was a bad establishment so she requested that they not have to wand patrons or search bags. She said she had been running Tracks Bar & Grill at a different location for 15 years, and didn't have issues with fighting or other problems. She said she had regular customers who had followed her from the old location that supported her and she wants to keep a good clientele.

Ms. Vang asked the location of the previous business. Ms. Hoang said it was at 1964 University Avenue. She said it was no longer open and she was basically changing locations because she had lost the lease at the old location. Ms. Hoang said she had had it for 15 years; the customers liked the way she ran the business and her family worked there so she wanted it to be a safe environment. She said she didn't mind the rest of the conditions and felt that the conditions made common sense.

Ms. Vang asked Mr. Fischbach whether Ms. Hoang needed the 2:00 a.m. license if she was closing at 1:00 a.m. Mr. Fischbach said Ms. Hoang should submit a letter saying she wanted to withdraw the application for the 2:00 a.m. license. Ms. Vang confirmed with Ms. Hoang that she understood her option if she was not considering operating until 2:00 a.m. and that she knows what she must do next.

In response to questions from Ms. Vang, Ms. Hoang said the establishment was a restaurant and bar, and her children who worked there were adults. She said she will be managing and her daughter was the assistant manager; she had about six employees to help her with the business. She said she was already open and operating using a management agreement with Lonetti's Lounge (previous business), and no physical or structural changes had been made. She said they would have American and Asian food.

Ms. Vang asked Mr. Fischbach whether an additional petition requirement was necessary. Mr. Fischbach said there was not a need because the outdoor service area was pre-existing.

In response to additional questions from Ms. Vang, Ms. Hoang said they opened at 10:00 a.m. and closed at 1:00 a.m. every day. She said the patio was enclosed. She said she was currently operating under Lonetti's policy of locking the front door to entry at 10:00 p.m. so security was only required at one entry on the patio side. She said she might switch it around and close the patio. She said there was a patio gate that was open and allowed people to come in the back door, which could allow people to easily walk out with alcohol. She said she had to have a gate open in case of emergency but maybe she could have an alarm. She said the gate was needed to allow customer access since the front door was locked at 10:00 p.m. so they would only need one security person. She said there was no alcohol on the patio after 9:00 p.m.

Ms. Vang referred to condition 1 and asked whether Ms. Hoang had submitted a plan or scheduled a meeting with the police department. Ms. Hoang said she had not. Ms. Vang asked when that needed to be done. Mr. Fischbach said it needed to be done before the license was issued. Ms. Vang recommended that it be done as soon as possible. Mr. Fischbach provided instructions and contact information for Ms. Hoang.

Ms. Vang said the license allowed outdoor liquor service until 10:00 p.m.; she asked if 9:00 p.m. was last call. Ms. Hoang said she chose to stop liquor service earlier, and always wanted a little gap because people intended to push it.

In response to additional questions from Ms. Vang, Ms. Hoang said garbage pick-up was weekly on Tuesday, with trash pick-up early in the morning and recycling around noon. She said she had one security personnel and only on Thursday, Friday and Saturday. She said they currently didn't have any entertainment. She said they wanted the entertainment license in case anything came up, and she was thinking about karaoke. She said when she took over they had a deejay but she figured out a way to have a better clientele. She said when things settled down she might have karaoke, one day a week. She said the door between the patio and restaurant was closed and it was a double door. She said the patio was designated for smoking.

Ms. Vang invited the district council representative to comment. Kerri Antrim, District 6 Planning Council, referred the letter they had submitted with the recommended modifications. She said the new owner should not be held to conditions related to behavior of previous owner and patrons. She said it didn't send a good message to potential patrons when patrons were searched, and that was what a lot of neighborhood was saying. She said the business had hosted North End social, and the food was great, they'd redone the ceiling and flooring, it was clean, the kitchen was done, and it was a totally different establishment and vibe. She said Lonetti's was one of the only places on Rice Street that had these conditions. She said District Council's recommendation was a matter of providing an even playing field; she said she had a letter from the owners of the business across the street requesting that the wandering and licensed and bonded security requirement be removed. She said the North End Business Association had not submitted a formal letter, but (Ms. Hoang) had attended meetings and talked about her business plan and nobody said the conditions were needed. She said it was expensive and sent the wrong message. She said Rice Street was challenging in and of itself, and Payne Avenue was challenging in and of itself, and new businesses such as Brunson's on Payne Avenue didn't have any conditions whatsoever. She said they were trying to get good businesses in and it (the security) didn't send a good message. She said it was across the street from an ice cream and sub shop and down the street from a playground and it was

a good location for a restaurant. She said it had been good on the two occasions she'd been there, and if there were problems, they (district council) were confident (Ms. Hoang) would be able to take care of it.

Ms. Vang clarified the language requested by the district council for condition 2. Ms. Antrim said they wanted clearly identifiable security personnel present to ID rather than search people. She said depending on how busy it was it might also be needed when there was entertainment. Ms. Vang confirmed that they didn't want wandering for the reasons mentioned, but wanted ID checking to remain. Ms. Hoang said she would train her security staff to make sure everything was well, and if they went to walk the parking lot, the bartender would check. She said even if security checked, if she were the bartender she would double check IDs because she was the one serving. She said she always told her employees, if they (patrons) looked young, just be safe and card them. She said she told the security to move around and be visible.

Ms. Vang asked whether the district council wanted to remove the sentence about re-checking customers re-entering the establishment. Ms. Antrim said she didn't know if that was necessary. Ms. Vang reviewed the proposed modification with Mr. Fischbach. Mr. Fischbach confirmed with Ms. Vang that her intention was to follow the district council's recommendation for modifications. Ms. Vang said the letter specified security personnel at each entrance, so that would require two people. Ms. Hoang said that was why they locked the front door to entry at 10:00 p.m. Mr. Fischbach said the senior inspector, for whom he was filling in, had better familiarity with the site and would have to review any modifications. He said the language issue of one or two security personnel could be clarified by the senior inspector. He said the condition language could stay the same, and the interpretation of the condition would be done by the inspector. Ms. Vang asked if the language could be modified to specify that security was required at open or accessible entrances. Mr. Fischbach said he would check with the other inspector. There was further discussion of which entrance would be best to lock at 10:00 p.m. Mr. Fischbach said the front door was more visible to the bartender than the patio gate, and if there were security only at the front door it would be easy for someone to sneak in through the patio.

Ms. Vang asked whether people could still exit the front door when it was locked. Ms. Hoang said yes. Mr. Fischbach said he still needed to check with the senior inspector. Ms. Vang confirmed that Ms. Hoang was agreeable to the proposed language change and plan moving forward pending consultation with the senior inspector. Ms. Hoang said as long as it meant they just needed one security. She said she didn't feel they needed two, and the business didn't make enough to be able to afford two.

Ms. Vang questioned whether condition 3 could be removed or combined with condition 2. Mr. Fischbach said it was his understanding that just the first sentence was to be removed and he had concerns about the issue of re-entry. Ms. Hoang said, based on her observations, if they went out to the patio for a cigarette, security didn't recheck. Mr. Fischbach asked whether security was at the patio gate or the entrance between the patio and the building. Ms. Hoang said they were at the door. She said security recognized people re-entering. Ms. Vang said the condition stipulated that they would have to be rechecked. Ms. Hoang said it would make her regular customers uncomfortable; she said it was a small establishment. Mr. Fischbach said they could operate with these conditions and ask for a modification in 6 to 9 months. He said his understanding was they

were getting rid of the need to check bags and the wandling. Ms. Vang indicated that the re-entry recheck was implied in the condition requiring that IDs be checked. Ms. Hoang reiterated that her customers wouldn't like having to be rechecked. Ms. Antrim said other establishments in the area didn't have the same condition. Mr. Fischbach said Lonetti's had had problems in the past, and quite often the same patrons would come back to the same location. Ms. Hoang said the customers were different and many came from her old restaurant, and there had been no conditions at her old location. In response to questions from Mr. Fischbach, she said she had been the license-holder at the old location for three years and had been the license holder at 719 Dale for a period. Mr. Fischbach said there were a few issues at 719 Dale.

Mr. Fischbach said a compromise could be to stamp or wristband customers. Ms. Vang asked Ms. Hoang whether she could make it part of her business plan to stamp or wristband patrons to avoid the issue of photo ID re-checking. Ms. Hoang said she didn't think that would be difficult. Ms. Antrim suggested leaving the conditions as-is and revisit in 6 to 9 months. Ms. Vang noted that an application for modification would be subject to the same notification requirements. Mr. Fischbach asked Ms. Vang whether the customer re-entry sentence was being removed. He said he thought the condition had been there for Lonetti's to ensure patrons were wanded on re-entering. After further discussion, it was decided that conditions 2 and 3 would be combined to clarify that IDs would be checked at the door only during the times security was on duty. Mr. Fischbach confirmed with Ms. Vang that the customer re-entry sentence was being removed. Ms. Vang said yes, and that it was implied in the requirement that IDs be checked by security. Ms. Hoang requested that language be added so that IDed patrons could be given a wrist band or stamp and not have to be rechecked on re-entry.

Ms. Vang confirmed the following changes to DSI's proposed conditions and District Council's proposed suggestions with Ms. Hoang who was in agreement: hours should be changed for condition 4 to close at 1:00 a.m.; condition 5 would be modified per district council's recommendation; and conditions 2 and 3 would be modified in response to Ms. Hoang's request regarding the high cost of providing two bonded and clearly identifiable security personnel for each entrance to just uniformed personnel assigned to any door, and removal of "wand" and searching requirement to requiring that Ms. Hoang devise a way to identify smoking patrons who re-enter the restaurant from the patio using a unique identifying marking on the hand or wristbands.

Ms. Vang said she didn't have any additional questions and was comfortable making recommendation of approval of the license with the agreed-upon modifications to conditions 2, 3, 4, & 5 as follows:

1. Licensee will create a video surveillance camera and lighting placement plan (video surveillance plan) for the interior and exterior of the licensed premises. Licensee will submit the video surveillance plan to the Saint Paul Police Department (SPPD) liaison with the Department of Safety and Inspection (DSI) for review and approval. In accordance with the approved video surveillance plan, licensee will ensure that video surveillance camera system is in good working order, ensure it is recording 24 hours per day, ensure it can produce recorded surveillance video in a commonly used, up-to-date format, and ensure that accurate date and time of day are visible on all recorded video. Licensee will retain surveillance video for a minimum of thirty (30) days. If an

- incident is deemed serious by SPPD, licensee shall make surveillance video immediately available for viewing by SPPD. If a copy of the surveillance video for a serious incident is requested by SPPD, Licensee shall have the technology, materials and staff available to immediately make the copy. In all other cases, licensee shall provide a copy of the surveillance video to the requestor within 48 hours.
2. Uniformed personnel clearly identified with the word “Security” easily visible on their uniform shall be assigned to any door where customers may enter the establishment starting at 10 p.m. on Thursdays, Fridays And Saturdays, or whenever entertainment is provided. Security staff are in addition to bartenders, servers, and cooks (staff assigned to these duties are not considered part of the security staff). Security shall remain until all patrons have left the premises (including the patio and parking lot areas).
 3. Whenever security is present they shall verify the age of all patrons entering the establishment by checking state or federally issued identification cards (no picture I.D. no entrance) to ensure no one under the age of twenty-one (21) may enter the establishment except in accordance with Minnesota statute 340A.503(4). Customers leaving the establishment to smoke in the contained outdoor patio area who are re-entering the establishment shall be required to present valid identification unless the licensee has established a system to clearly identify those patrons smoking on the patio that have previously presented identification with a unique identifying marking such as stamping on the hand using indelible ink or wristbands.
 4. Last call will be given no later than 12:30 a.m. License holder shall not allow new patrons to enter the establishment after 12:30 a.m., consumption of alcohol to be discontinued before 1:00 a.m. The establishment will be closed and all patrons and staff gone by 1:30 a.m. from the premises (including the patio and parking lot areas).
 5. The food and beverage service to the patio must stop at 10:00 p.m. each night of the week. Patrons will be allowed to smoke on the patio until 1:00 a.m.
 6. No outdoor food and/or beverage preparation is allowed on the outdoor patio without prior written approval from DSI.
 7. Licensee will post signs in the patio encouraging patrons to respect the neighborhood by limiting noise in the patio area as much as possible.
 8. Per City of Saint Paul Legislative Code 411.02, the definition of Entertainment A is "Amplified or nonamplified music and/or singing by performers without limitation as to number, and group singing participated in by patrons of the establishment." (includes karaoke). Entertainment A license does not allow for patron and or performance dances.
 9. Any outdoor activities related to the outdoor seating area shall comply with applicable State and Local rules and regulations, including but not limited to Chapter 293 Noise Regulations of the City of Saint Paul Legislative Code.
 10. Licensee agrees to take appropriate action(s) to ensure that the sale, display and/or consumption of alcoholic beverages in contained within the approved indoor and outdoor patio service area as per the approved plan on file with DSI.

She also recommended that Ms. Hoang follow up with police soon for review of the security camera plan and to submit a withdrawal letter for the 2 a.m. license if she has no intention of opening past 1 a.m.

Mr. Fischbach confirmed that Ms. Hoang understood she was to operate under the existing license conditions until the new license was issued.

The hearing was adjourned.

The Conditions Affidavit was signed on May 21, 2018.