

LICENSE HEARING MINUTES
Walmart Inc., d/b/a Tiffany Lounge, 2051 Ford Parkway
Thursday, Dec 7th, 2017, 2:00 p.m.
Room 330 City Hall, 15 Kellogg Boulevard West
Nhia Vang, Deputy Legislative Hearing Officer

The hearing was called to order at 2:00 p.m.

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

Licensee: Blake Montpetit, applicant/owner, and his attorney Dan Mcbralt

License Application: **Expand the indoor liquor service area into an approximately 1,600 square foot space located to the west of and immediately adjacent to the existing liquor service area, and the outdoor liquor sidewalk service area approximately 20 feet to the west** for an establishment with the following licenses: Liquor On Sale - 101-180 Seats, Liquor On Sale - Sunday, Liquor On Sale - 2 AM Closing, Liquor-Outdoor Service Area (Sidewalk), Entertainment (B), and Shared Parking Agreement

Other(s) Present: Perry Divine & Debi Brewer, P.O. Box 5478, and their attorney Jon Applebaum, 805 8th Street; Shamar Jenkins, 871 Fourth Street, Apt. 5; Michael Miller, 579 98th Avenue, NE; Bill Holland, 2980 Cleveland Avenue, N.; and Joe Kozar, 1918 Saunders.

Walmart Inc., DBA Tiffany Lounge, application for expanding the indoor liquor service area into an approximately 1,600 square foot space located to the west of and immediately adjacent to the existing liquor service area, and the outdoor liquor sidewalk service area approximately 20 feet to the west for an establishment with the following licenses: Liquor On Sale - 101-180 Seats, Liquor On Sale - Sunday, Liquor On Sale - 2 AM Closing, Liquor-Outdoor Service Area (Sidewalk), Entertainment (B), and Shared Parking Agreement.

Ms. Vang stated that this was an informal legislative hearing for a license application. This particular license required a Class N notification which means the neighborhood was notified and people had the chance to voice their concerns. The City received a letter of concern/objection which triggered the hearing. There were three possible results from this hearing: 1) recommend the City Council issue this license without any conditions; 2) recommend the City Council issue this license with agreed upon conditions; or 3) recommend 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 applicant will be required to sign a Conditions Affidavit demonstrating the understanding of the conditions.

DSI staff will explain their review of the application and state their recommendation. Then the applicant will be asked to discuss their business plan. Next, members from the community will be invited to testify whether they were in objection or support of the license application. At the end of the hearing, Ms. Vang will make a recommendation for the City Council to consider. Her

recommendation will be on the Consent Agenda; the City Council is the final authority on whether the license is approved or denied.

Ms. Vang also read into the record a letter of support received by the District Council and its resolution (RES 17-1941) for a 45-day waiver and noted that resolution will be considered by the City Council on December 13, 2017.

Mr. Fischbach reviewed the license conditions:

Existing License Conditions are:

1. Licensee agrees to limit the placement of seating on the public sidewalk to the area and number of seats shown on the approved sidewalk seating plan on file with the Department of Safety and Inspections (DSI).
2. Licensee agrees to take appropriate action(s) to ensure that the sale, display, and/or consumption of alcoholic beverages is contained within the defined service/seating area as per the approved sidewalk seating plan on file with DSI
3. Each year prior to the placement of table(s) and/or chair(s) in the public right-of-way (i.e., sidewalk), the licensee agrees to obtain a new Obstruction Permit from the Department of Public Works. Licensee agrees to maintain the sidewalk café in accordance with the conditions placed on an approved Obstruction Permit, acknowledges that an Obstruction Permit is effective on April 1 and expires on October 31 of each year, that table(s) and/or chair(s) may not be placed in the public right-of-way before or after the effective/expiration dates, and that a failure to comply with this condition will result in adverse action being taken against all of their licenses.

DSI Recommended Additional License Conditions are:

4. Each year at the time of license renewal the licensee agrees to provide a copy of a valid shared parking agreement to the City's Zoning Administrator to demonstrate compliance with zoning parking requirements, and pay the applicable City fee associated with maintaining this agreement.
5. 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.

Mr. Fischbach noted that building was in process; zoning recommended approval with conditions with the signed shared parking agreement and licensing was recommending approval with conditions of the license application.

Ms. Vang asked whether additional parking space were required with the expansion. Mr. Fischbach noted that twelve (12) additional spaces were required per the signed shared parking agreement.

Ms. Vang asked the applicant, Mr. Blake Montpetit, about the business: history, hours of operation, number of employees, etc. and whether he had questions regarding the proposed conditions. Mr. Montpetit read a letter that has been submitted in to the file (See, Letter from Blake Montpetit owner of Tiffany Sports Lounge, dated Dec 7th, 2017). He is asking for approval of the interior and exterior expansion of the liquor service area. Tiffany has been in business since 1971 and for more than 50 years, it has been a family-oriented business. The location provides an opportunity for family gatherings and has invested in the community through its fundraising efforts to provide assistance to the community. (Mr. Dan Mcbralt, attorney for Walmart, Inc., is in attendance and sitting next to Mr. Montpetit.)

Ms. Vang asked whether the current video surveillance was installed for both the interior or exterior and if not for the exterior, when would the applicant have the cameras installed by? Mr. Montpetit responded that he has a meeting scheduled with Sergeant Standway next Friday at 10:30 a.m. to identify the optimal locations for video surveillance. Mr. Montpetit understands the requirement of the conditions placed on the business. Currently, video surveillance is only installed on the exterior but with the condition requiring exterior installation, Mr. Montpetit will work with the police and DSI to ensure the business complies with the requirements.

Tiffany was last remodeled in 1994. Currently, the business is being remodel again to better serve the patrons made mainly of family-oriented customers and the elderly in terms of providing the needed extra low-top seating and handicap restroom. This change will increase staffing from twelve (12) to eighteen (18) employees. Mr. Montpetit recognizes that parking will affect the community and employees are recommended to not park near the business or for those staffing who lives in the community are recommended to bike. A dedicated staff person will assist women customers to their car at night for safety concerns.

Ms. Vang asked about the business owner's experience in managing patrons that appear to be over intoxicated. Mr. Montpetit indicated that they are invested in their customers and have in placed a process to help their employees deal with intoxicated patrons and have, in the past, provided transportation for to help with rides. Next month, training will be provided to employees via the MN license beverage association.

Tiffany is opened daily until 2 a.m., except on Sunday when they close is at 1 a.m. Sidewalk closes at 11 p.m. when the kitchen closes, but the teardown starts at 9 p.m. The hours remain the same with the expansion of the liquor service area.

Trash gets picked up on Thursday, Friday, and Saturday. Over the years, they have become more proactive to get out and do the additional trash pickup from the surrounding areas. Mr. Montpetit agreed they could do a better job and address those concerns when notified. In the past, he was unaware of trash being an issue because no one had contacted him or the business.

Mr. Joe Kolar, representing the Highland District Council Board, stated that the district council was in support of the expansion, especially when a business meets the ADA requirements. He believes that additional meeting space is always needed in the area and neighbors have expressed their support for Tiffany's proposed plan.

Mr. Bill Holland from Half Price Books testified on behalf of the local district manager who is on vacation and could not be in attendance. (Mr. Michael Miller, Assistant District Manager, was also in attendance but did not testify.) The concern of excessive trash and items left behind on Half Price Books store front area was attributed to customers of Tiffany was raised. Also, on two (2) occasions, the store's glass front windows were broken on the biggest shopping days being November 24, 2015 and November 24, 2017, from intoxicated Tiffany customers. They have submitted in letters, emails and pictures of where the incidents occurred for the hearing; however, it was acknowledged that no communication was made directly to Mr. Montpetit to discuss the incidents and the extra trash. It has been a burden for staff from Half Price Books to continually clean up trash left behind from customers of Tiffany before the book store can be opened. Mr. Holland believed that Tiffany should have reached out after the last incident on November 24, 2017 to offer or express an apology for the incident. They agreed that communication goes both ways and that they could do better. Mr. Montpetit offered to communicate directly with Mr. Holland any time concerns are shared with him. He added that many of the items shown in the submitted photos (attached to the record) are not sold at his property. (Discussion ensued that Mr. Brady O'Neil is supposed to be making contact; however, in the meantime, Mr. Holland and Mr. Montpetit were asked to exchange contact information and to work out a communication plan to address future concerns so that a similar incident could be avoided come November 2018 and going forward.)

Ms. Vang asked if Half Priced Books had ever file a formal complaint with the city and the response from Mr. Holland was that they had not. They had hoped that Tiffany would take more responsibility for their customers' actions. All they had from the past are the police reports in the attachments they previously submitted for the record. Ms. Vang recommended that going forward that Half Price Books file formal complaints with DSI and the Police Department when the business is negatively impacted and that they work on formalizing a direct line of communication with Mr. Montpetit.

Mr. Perry Divine, President of Enivid Realty Corp., and Ms. Debi Brewer, VP of Enivid, next testified and the concerns raised so far at this location did not just start over the last two (2) years. In fact, these concerns go back to the early 1980s. They noted that their attorney Mr. Jon Applebaum was also in attendance. The have decided to bring the concerns raised in their objection letter because of the incident affecting their tenant Half Price Books in November 2017. Their property has been a longstanding presence in the community since 1959 until the property was leased over the last couple of years to Half Price Books. The video condition proposed will only capture what has happened but that it will not prevent the situation from happening. They are requesting a that Tiffany be denied the expansions of the 1600 sq. ft. and the expansion of the sidewalk given Tiffany's past history of not

taking responsibilities for their customer's negative behaviors from trash and property vandalism. They believe that one business' expansion plans should not be allowed to the detriment of another neighbor.

Ms. Debi Brewer referenced the submitted documentation regarding the previously mentioned 2017 incident. A letter informing Councilman Tolbert's office regarding the incident was also mentioned. Ms. Brewer stated that the submitted documentation supports their concern of excessive trash being attributed to Tiffany's Lounge. Trash and the broken window incident occurring on Black Friday are the major issues of concern. The Half Price bookstore manager spent an extra 2.5 hours cleaning up the trash and vandalism instead of tending to the business on the busiest shopping day. She was also verbally harassed in the parking lot and had expressed safety concerns in a letter as part that was made part of the submitted documentation. It was further noted that they had also reached to Councilmember Tolbert's office about this incident. Ms. Brewer then pointed to one of her photographs showing the grain belt beer cups they believe are from Tiffany's since there are no other establishment nearby that serves beer. She also referenced MN legislative codes and St. Paul Legislative code §409.08, paragraph 9, 13 and 15 regarding on-sale licensee taking adequate steps to prevent alcoholic items from leaving the premise. She also pointed to §106.01, Paragraph 5 regarding side walk exemptions stating that license holder shall enforce any item sold on premise will remain within the premise. She also referenced Section 246.01 regarding trespassing and loitering. She concludes her testimony by referencing the codes and procedures that Tiffany had failed to comply. She further added that issues have not been properly addressed by Tiffany and if Tiffany cannot currently manage its existing 3200 sq. ft., how can they manage the additional 1600 sq. ft.? She restated concerns from the Zamansky letter mentioning violation under Ordinance 310. (Letter dated November 30, 2017 from Zamansky Law has been entered into the record.)

Ms. Brewer stated that should the license application be approved that a condition about requiring an off-duty cop as the bouncer be added. She asked that trash needs to stop.

Mr. Montpetit responded to the trash statement saying that Tiffany does not use plastic cups; he cannot confirm from the photographs that the items shown are from his establishment.

Ms. Brewer stated that the letter was also sent to Councilmember Tolbert's office. Ms. Vang asked what the follow-up was from Councilmember Tolbert's office and whether Enivid had filed a formal complaint with the City. Both Ms. Brewer and Mr. Divine said that they were not aware of the City's process until recently, especially the online process. They assumed that the letters sent to Councilmember Tolbert's office served as their formal complaint. Ms. Vang asked Mr. Fishbach whether this action would suffice as a formal complaint. He responded that it depends on whether the letters sent to Councilmember Tolbert's office were communicated to DSI. He added that in addition to the online process, a complaint can also be made over the telephone at 651-266-8989. Regarding the trash issue generated from the plastic cup, Mr. Fishbach recommended that one way to alleviate that complaint was for Tiffany to not allow any plastic cups to leave the premise.

Mr. Dan Mcbralt, attorney for Walmart, Inc., stated that condition #5 is already very robust and that it would be a cost to Tiffany's to comply with DSI. He expressed the desire for the local patron's support of the patio expansion due to the limited time of year in Minnesota. He noted the beer bottles from

the photographs are clearly not from Tiffany's. Tiffany will do their part to help manage the concerns and reduce any items from leaving the premise.

Based on recommendation from Mr. Fishbach about eliminating plastic cups from leaving the premise, Ms. Vang encouraged Tiffany to use glass to help alleviate future trash concerns considering the previous testimonies. She also encouraged community members and surrounding businesses to utilize the City's process and protocol for filing a formal complaint so that an investigation can be completed. While she understands the concerns raised and appreciate the submitted documentation, she cannot rely on that information unless it has been thoroughly investigated by DSI or the Police Department. She relies on verified information in developing conditions as part of her recommendation to the City Council.

Mr. Montpetit noted some of the concerns in the area can be attributed to patrons of Jimmy Johns which is located a ½ block down from Tiffany since Jimmy Johns are open until 3 a.m. In terms of taking responsibility for clearing trash outside Tiffany, they do daily morning trash pick-up before they open and the often help patrol the area within a ½ block before the restaurant close to address the safety of their customers.

After closing the public hearing, Ms. Vang asked that a copy of the shared parking agreement be added to the record and whether the sidewalk site plan had been submitted. Given that the sidewalk will not open until Spring, a sidewalk site plan will be submitted later. Ms. Vang asked that when the sidewalk site plan has been submitted and approved by Public Works that it be added to the record. Ms. Vang reviewed the draft of the sidewalk site plan and noted that the plan shows 8-12 additional chairs within the 20-sq. ft. expansion of the store front. She recommended that smoking should be in a designated area and away from seating area where food is served. Lighting placement should be adequate but disturbing to nearby residences and businesses.

Regarding increase in business traffic especially with more family-oriented customers and nights when its popular for college students, Mr. Montpetit responded that Tiffany hires security with large events, provides transportation for St. Thomas Students on the college nights to alleviate parking concerns and customers who may become to intoxicated to drive.

Ms. Vang then read into the record submitted emails and letters in opposition and support of the license application from Half Price Books District Manager Darrin Walker, Perry Divine of Enivid Realty Corporation, Highland District Council Board, Dede and John Leininger, Brandon Mason, Ed and Claudia Dieter and Casey Mason.

(Said emails and letters are made a part of this record).

Ms. Vang recommended that Tiffany's strongly consider not selling cans and selling drinks in plastic cups to avoid the trash issues, continue to provide security for large events that may impact the neighborhood, and to formalize communication plans with Half Price books.

Ms. Vang stated that after reviewing the records and testimonies from all parties, she will recommend to the City Council that they approve the license with the following license conditions:

Existing License Conditions

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Additional License Conditions

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The hearing adjourned at 3:00 p.m.

The Conditions Affidavit was signed and submitted on November 29, 2017.