

ITEM #: 15
DATE: 07/18/23
DEPT: Police

COUNCIL ACTION FORM

SUBJECT: LIQUOR LICENSE RENEWAL, ES TAS, 216 STANTON AVENUE

BACKGROUND:

Es Tas, located at 216 Stanton Avenue, has applied for renewal of its Class C Liquor License. These state licenses and permits must receive approval by the local authority (City Council) before they can be issued by the state.

The Police Department conducts compliance checks of establishments that hold liquor licenses in the City of Ames. These compliance checks are completed by taking to the establishment an underage person who attempts to purchase alcohol. A business passes the check if the employee asks for identification and rightly refuses the purchase. An establishment fails the compliance check if the employee sells to the underage person.

Es Tas passed two such compliance checks conducted by the Ames Police Department on March 9, 2023 and May 4, 2023. However, in the previous 12 months, Ames officers have cited 60 individuals for being on-premises while underage. This is a substantial number of citations for a liquor license establishment in Ames.

Of those 60 individuals cited, officers were able to verify a fake ID was used in at least 14 cases. It is worth noting that officers are unable to determine if an individual used a fake ID or gained entrance some other way in all cases. In addition to the on-premises violations, there are two additional criminal charges of unlawful use of a license and one criminal charge of Interference with Official Acts.

Section 17.16 of Municipal Code prohibits minors to be on premises of liquor license establishment unless 50% of the sales of the establishment come from food service as opposed to alcohol. This type of operation is referred to locally as a "50/50." A liquor-serving establishment may also be granted permission to allow minors on the premises during certain hours if the business can demonstrate a pattern of sales that indicate food is more predominantly purchased during some parts of the day. At other times, such an establishment operate more akin to a bar and must ensure no minors are on the premises during those times.

In March 2023, Es Tas was granted 50/50 status by the Police Department, as it demonstrated 50% of its business is food sales until 8:30 PM (See Attached 50/50 agreement). The 8:30 PM cut-off time was determined by the Police based on the time the kitchen closes in the establishment. Es Tas submitted a plan to the Chief of Police regarding how it would keep minors from being served alcohol. The plan provide by the establishment was voluntarily more conservative than what would be permitted by the

Police -- Es Tas management decided to only allow 21+ on weekend nights around 3:00 PM and weekdays around 5:00 PM. Es Tas is within its rights to elect an earlier time to disallow those under 21 in the bar, so long as the cut-off time is posted within the establishment. **It is a clear responsibility of the establishment to remove anyone under 21 from the premises when the cut-off time occurs.**

In preparation for this license renewal, staff conducted the customary check of records. This check identified the 60 violations mentioned previously. Of these violations, 21 occurred after the 50/50 status went into effect. Based on these violations, staff conducted a compliance check directly related to the 50/50 status to determine if minors were entering the establishment prior to the 21+ time and then remaining on site, or if there was some other reason for the high number of violations.

On June 30, 2023, staff from the Police Department conducted a compliance check. Two underage people entered Es Tas at 2:30 PM. The sign posted stated the bar was 21+ starting at 3:00 PM. At 3:00 PM, no effort was made by staff to remove minors from the establishment as required by the 50/50 agreement. At 3:15 PM, one of the minors approached the bar and purchased an alcoholic beverage. The bartender asked for ID, but overlooked the person was under the age of 21 and served the person. When officers cited the bartender, she stated that she has worked for Es Tas for 2 ½ years and was unaware of the times the establishment goes to 21+.

On July 7, the Chief of Police spoke with Terry Cullen from Es Tas and revoked the bar's 50/50 status for failure to uphold the agreement. Mr. Cullen informed the Chief that he would not be appealing this decision. Also discussed was the high number of violations. Mr. Cullen admitted the 50/50 exemption was probably a mistake and contributed to the high number of violations. The Chief also told Mr. Cullen that officers reported that on several occasions when a citation was written, they were unable to subsequently find a manager to discuss the violation. Mr. Cullen admitted this was a problem, but stated the bar had recently hired a new full-time manager to ensure there is someone in charge each night managing the establishment.

If the City Council opts for denial of the requested renewal, the denial of a liquor license can be appealed, first to the ABD, then to an Administrative Law Judge, and then the District Court. If the applicant files an appeal with ABD, they are allowed to continue to operate. If the appeal(s) are not successful, alcohol may not be sold on the premise for one year, unless or until a new licensee applies for and is granted a new liquor license.

However, if the requested 12-month license renewal is denied, the applicant may elect to apply for a shorter 8-month license renewal. If that shorter license renewal was approved, the establishment's license would not be considered denied and the restrictions that would accompany a denial would not take effect. The applicant could then subsequently demonstrate acceptable compliance and apply for a 12-month renewal in spring 2024.

ALTERNATIVES:

1. Deny the application for a 12-month liquor license renewal.
2. Approve the application for a 12-month liquor license renewal.

CITY MANAGER’S RECOMMENDED ACTION:

Compliance checks are conducted by the Ames Police Department and ABD to ensure liquor license holders are complying with their obligation to ensure underage individuals are not being sold or served alcohol. **The applicant, Es Tas passed two such checks in March and May 2023. However, a third check related to the 50/50 status of bar was failed. In addition, the establishment has had over 60 violations during the renewal period.**

It is clear to staff that while fake IDs are a difficult problem, it appears that checking IDs is not being done with due diligence given that an underage person can be served after providing a genuine ID with a date of birth indicating their age is less than 21. For these reasons, the Chief of Police recommends that City Council not renew the requested Class “C” liquor license due to the high and unacceptable number of violations and for not following the 50/50 agreement. Therefore, it is the recommendation of the City Manager that the City Council take the recommendation of the Chief of Police to adopt Alternative No. 1.

Email to Terry Cullen, owner of Es Tas sent on July 6, revoking his 50/50 status and putting him on notice about the intent to recommend not renewing his license.

On Jul 6, 2023, at 2:32 PM, Huff, Geoff <Geoff.Huff@cityofames.org> wrote:

Terry,

In preparing for your liquor license renewal we have continued to see a high number of violations at Es Tas. You have had **60 on premise violations** in the past 12 months. This may be the highest total I have ever seen in my 29 years of law enforcement. It is clear there is a problem. While Lieutenant Arkovich has been working with your staff, it appears the problem has continued. While there are many fake IDs out there, there should not be this many underage patrons found.

More troubling is your 50/50 status that I approved in March. On June 30, 2023 we conducted a compliance check to ensure you were operating as we agreed upon. We sent two minors into the establishment at 2:45pm and the time to go 21+ was posted as 3pm. They were not required to show ID at the door. **At 3pm, there was no attempt to remove anyone from Es Tas.** At 3:15pm, one of the minors approached the bar to order a drink. While the bartender looked at the ID, she failed to determine the real ID showed the person as under the age of 21 and sold. The bartender said she has worked there for 2 ½ years and was unaware of the time at which the establishment goes to 21+ only. You have also had 21 on premise violations since I approved your 50/50 privilege.

I am notifying you that I am Revoking your 50/50 Exemption to the On Premise code. This means you will not be allowed to have patrons under the age of 21 in the establishment at any time. If you would like to appeal this decision, you may do so in writing to me by 5pm, July 13 (7 days from today) to request a hearing before the City Council.

In addition, your liquor license renewal request will be reviewed by the City Council on July 18. I will be recommending the City Council not renew your application for a 12-month license due to the high number of violations and for failing to follow the 50/50 agreement resulting in failure of the compliance check on June 30. **I highly suggest you are in attendance to defend your position to the City Council on that night. If you decide to appeal the revocation of your 50/50 status, that would also be held at the July 18 City Council meeting. The meeting begins at 6:00pm in the City Hall, City Council Chambers.**

I have copied the content of the emails between us about the approval of your 50/50 status that outlines the conditions you agreed to.

Please respond back to this email so I can ensure it was received.

Geoff Huff
Chief of Police

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The following emails are correspondence between Staff and Mr. Cullen outlining the details of his 50/50 exemption.

Chief Huff,

These all are acceptable except the hand stamping and wrist bands. We've only used those when there is going to be a significant amount of people in our location and some underage. We now avoid those times by going 21+ whenever we think its going to be busy during the day (11-5). This has eliminated the need for those measures and made us significantly less likely to have any issues with under 21's. We are significantly more like Texas Road House or Chipotle during our under 21 times. Our customers are sitting down. They aren't moving around and if they do its easy to monitor. They are usually over 25 if not over 40. They are coming in for lunch or an afternoon snack and are not at Es Tas to engage in any type of behavior that resembles the bars in Campustown at night. Thanks again for all your feedback and your and your officers help with the classes.

Terry Cullen
651-983-9431

From: [Huff, Geoff](#)
Sent: Friday, March 10, 2023 7:45 AM
To: Terrence Cullen
Cc: [Arkovich, Michael](#); [Tuttle, Jason](#)
Subject: RE: On Premise

Terry, that is a little more problematic as you can't really flip back and forth. However, you can always switch to 21 only earlier. So, if your receipts show 50/50 until 8:30pm, then that should be the time. However, if you decide on any day to lower the time and go with 5pm or 3pm, that is fine as long as you post it where both the public and the officers can see it. What I can't do is approve until 5pm and on some days you go to 8:30pm. Hopefully that makes sense.

To summarize, once I receive the documentation of 50/50 until 8:30pm:

1. The establishment will post conspicuously in a location to alert the public and police department what time you must be 21+ to entire the establishment. In this case, I would be approving 8:30pm, but management may change the time to an earlier time (not later) provided they post a sign with that earlier time. The establishment would also need to ensure there are no minors in the establishment when that time comes.
2. Patrons will be ID'd at the door to identify those under and over 21 and under 21 will be marked with both a hand stamp, wrist bands and different cups to differentiate them from the 21+ patrons. ID will also be required at the point of sale for everyone intending to consume alcohol. I would recommend employees also do spot checks to ensure those under 21 have not acquired an alcoholic beverage.
3. The establishment is responsible for ensuring all minors (under 21) are removed from the establishment by 8:30pm each night unless an earlier time is posted, and then that becomes the time all minors must be removed from the establishment. Remember, the establishment must not allow minors in or remain on premise after 8:30pm or a posted earlier time.

4. If a minor is located on premise in possession of alcohol before the cut off time, they would be cited for possession of alcohol under the legal age and the establishment for providing alcohol to a minor. (This is bad)

Let me know if I have captured this correctly or if you want to add anything. This plan will be approved once the sales documentation is received.

If you have any questions, let me know.

From: Terry Cullen <Terrence Cullen
Sent: Thursday, March 9, 2023 9:46 PM
To: Huff, Geoff <Geoff.Huff@cityofames.org>
Cc: Arkovich, Michael <mike.arkovich@cityofames.org>; Tuttle, Jason <Jason.Tuttle@cityofames.org>
Subject: RE: On Premise

[External Email]

Chief Huff,

Our current intent is to be 21+ after 5PM except on Fridays when we will be 21+ after 3. My intent on asking was so that if we want to change its much simpler. The only days we are thinking about changing be would Sunday and Monday until 830.

That is a great idea to ID at the door and the bar when we have a door person. We make sure that no one under 21 gets alcohol with different cups, hand stamps, and wrist bands. Monitoring groups and trusting your instincts we have found works very well. Sometimes you can just tell by a person acting suspicious that they are going to try and drink underage so we watch them closer. We also are 21+ the entire day on days we know we will be busy like we are at night. These include basketball and football games and special days like 801 day.

When we switch from under 21 okay to only over 21 we card everyone in the location. Under 21 is not allowed to stay.

We ID at the point of sale all the time. If someone is ordering drinks for more than themselves we check the ID's of everyone receiving drinks and or shots.

You are exactly right about patrons moving around and making it hard to track who is 21 and who isn't. Thank you for working with us about the difference between being 21+ and having under and over 21 inside the location. Ill send the food v alcohol sales over later tonight or tomorrow.

Terry Cullen
651-983-9431

From: [Huff, Geoff](#)
Sent: Thursday, March 9, 2023 9:12 AM
To: Terrence Cullen
Cc: [Arkovich, Michael](#); [Tuttle, Jason](#)
Subject: RE: On Premise

You're getting close.

Is it your intent to be all ages from open to 8:30pm? If yes, submit receipts for that time period and as long as it is 50% food, should be good on that.

Will you ID at the door (Doorman) and at the point of sale (both before and after 8:30)? How will you make sure those who are under 21 are not in possession of alcohol before 8:30pm. Wrist bands, different cups, something else?

At 8:30pm, am I understanding that all everyone in the bar will be ID'd and minors asked to leave at that point? I thought at one point you mentioned taking the IDs of underage people when they came in to more easily find them at 8:30pm.

Will you ID at the point of sale before 8:30pm? I would suggest you do and possibly limit the number of drinks someone can purchase at one time.

Continue to utilize IPACT (<https://abd.iowa.gov/education/i-pact>) and attend our trainings and meetings.

And yes, no outside alcohol/food permitted inside the establishment.

Just remember, if we were to find a minor on premise in possession of alcohol before 8:30pm, both the minor and the bar are cited. This violation is worse than an underage person being on premise when it is only 21 so the bar is set high to get this right. If patrons are moving around the establishment a lot during this time, it will be hard to manage, unlike a sit-down restaurant where the server can more easily keep track of which patron is 21 and which is not.

Please let me know how you will address the concerns in this email and we will continue to move it forward.

Geoff Huff, M.A.
Chief of Police

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From: Terry Cullen <Terrence Cullen
Sent: Wednesday, March 8, 2023 10:54 PM
To: Huff, Geoff <Geoff.Huff@cityofames.org>
Cc: Arkovich, Michael <mike.arkovich@cityofames.org>; Tuttle, Jason <Jason.Tuttle@cityofames.org>
Subject: RE: On Premise

[External Email]

Chief Huff,

First of all apologies on taking so long to this back to you. I thought I had sent it, but I found it in my outbox and it had never been sent.

2. Our plan is to only allow 21+ to consume or be in possession of alcohol. We do this by carding everyone that look under 40. We also do this by monitoring the tables and other seating areas so there isn't any sharing of alcohol and if there is then all customers must over 21 to share. If they aren't they obviously can't have any of their friends drinks. We also monitor for outside alcohol brought in. Its obviously against our policy to bring any outside alcohol or outside food in so anything that we don't serve to people needs to be put away or the customer needs to leave. We have our employees attend the training sessions with the Ames PD.
3. We go through and card all the current customers. If they aren't over 21 then they need to leave.
4. We currently pay \$5 for every fake our employees take, send our employees to the Ames PD training sessions, have them take the IPACT course, and provide raises to door persons who take fake ID's and pass compliance checks.

Can I submit our sales to 830? That is right where start to tip into more alcohol than food. I like the times we have now, but it seems it would be an easier process to change to an earlier time than to change to a later time. Thanks for all the help and the training sessions. We really appreciate it.

Terry Cullen
651-983-9431

From: [Huff, Geoff](#)
Sent: Wednesday, February 15, 2023 8:26 AM
To: Terrence Cullen
Cc: [Arkovich, Michael](#); [Tuttle, Jason](#)
Subject: RE: On Premise

Terry,

I believe I spoke to you at the Bar meeting the other day about the 50/50. Here is what I need:

1. I will need enough information to verify that 50% of your sales are food to be eligible to allow minors on premise (This has been provided, thank you)
2. What plan you have to ensure minors are not in possession of or consuming alcohol during the times you open to all ages

3. The times of operation, when you open, when you will revert to only 21 and how you will get those under 21 out of the establishment (you can always change to an earlier time, but not a later time and it must be posted)
4. Any other information to show how you will operate to ensure no one under the age of 21 is in possession/consuming alcohol

Geoff Huff, M.A.
Chief of Police

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From: Arkovich, Michael <mike.arkovich@cityofames.org>
Sent: Tuesday, January 24, 2023 2:25 PM
To: Huff, Geoff <Geoff.Huff@cityofames.org>; Tuttle, Jason <Jason.Tuttle@cityofames.org>
Subject: FW: On Premise

Chief,
Here's the information Es Tas sent me today. Let me know what else needs to be done.

Mike

Lieutenant Mike Arkovich

Patrol Shift 1 11:00 pm – 7:00 am
Ames Police | City Hall, 515 Clark Ave | Ames, IA 50010



515-239-5133 Non-Emergency | 515.239.5533 *Crime Tip Hotline* | 515.239.5474 Office | 515.450.3948 Cell | 515.239.5429 Fax

Mike.Arkovich@cityofames.org

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From: Terry Cullen <Terrence Cullen>
Sent: Tuesday, January 24, 2023 2:19 PM
To: Arkovich, Michael <mike.arkovich@cityofames.org>
Subject: RE: On Premise

[External Email]

Lieutenant Arkovich,
I attached our for last year until 5PM. We thought about it and we only want to do minors before 5pm except on Fridays where we want to do minors only before 3pm. If you need anything else just let me know.

Terry Cullen
651-983-9431

From: Arkovich, Michael
Sent: Sunday, January 22, 2023 4:45 AM
To: Terrence Cullen
Subject: On Premise

Terrance,

Thanks for calling this morning. Below is some information on the 50/50 rule. I look forward to receiving your documents and I will pass them off to the Chief for his review.

Sec. 17.16. MINORS PROHIBITED ON CERTAIN PREMISES

(e) The underage person is on the premises during specified posted hours that the licensee does its business primarily in food sales, in accordance with a plan approved in advance by the Chief of Police. To receive plan approval, a licensee shall be required to demonstrate that there is a **clearly definable pattern of daytime hours during which more than 50% of the business' sales are food**. It shall be the strict duty of the licensee, and of all persons employed with respect to said premises, **to remove all underage persons from the premises before the start of restricted admission hours each day**, and it shall be the strict duty of the licensee permitting underage persons onto the premises, and of all persons employed with respect to said premises, to prevent underage persons from consuming or possessing alcoholic beverages on said premises. **Failure in these duties, whether knowingly or otherwise, shall be punishable as a violation of this section.**

So, what does that mean? Essentially, if an establishment has a liquor license but more than 50% of their sales are food, they can submit a plan to the Chief of Police to allow minors in during those hours when over 50% of sales are food. Think of Applebees, a restaurant that serves alcohol but all ages are allowed.

Here are the issues. If a Bar that serves food submits the plan and is approved and we find a minor in possession of alcohol on premise, then we would write the minor for PAULA (not on-premise) and the bar for a violation of 17.16(e) or providing alcohol to a minor, or maybe prevention of consumption. This is much worse than an on-premise violation where the minor used a fake ID to get in. They would probably have a tougher time keeping their liquor license with these types of violations.

In addition, the Bar would have to designate a time when their food sales go below that 50%, usually around 9pm (West Towne Pub), to no longer allow minors in. They would also have to figure out a system to get the minors out who came in during the time they were allowed.

A restaurant that serves alcohol (Applebees, West Towne, Brick City, Dublin Bay, etc) can usually manage the minors as they are seated, you have a server checking IDs, etc. In a Bar that serves food, people are moving around, not necessarily seated and this makes it really difficult to manage the minors.

Lieutenant Mike Arkovich

Patrol Shift 1 11:00 pm – 7:00 am

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