

ITEM #: 28  
DATE: 08-08-23  
DEPT: Police

**COUNCIL ACTION FORM**

**SUBJECT: LIQUOR LICENSE APPLICATION (8-MONTH), TERRY & ANDY'S TACOS, INC. D/B/A ES TAS, 216 STANTON AVENUE.**

**BACKGROUND:**

On July 18, 2023, the City Council declined to renew a Class "C" liquor license requested by Terry & Andy's Tacos, Inc. (Es Tas). At that time, staff reported to the City Council that 60 on-premises violations had occurred in the past year at the establishment, and Es Tas failed a compliance check on June 30, 2023.

The Police Department conducts compliance checks on establishments that hold liquor licenses in the City. These compliance checks are completed by taking an underage person to liquor licenses establishments who then 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 compliance checks in March and May of 2023.

Section 17.16 of Municipal Code prohibits minors to be on the premises of a 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. 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 the license renewal requested in July, staff conducted the customary check of records. This check identified the 60 violations mentioned previously. Of these

violations, 21 occurred after the time when 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.

Since the denial of the license renewal in July, staff has been in contact with management from Es Tas and has submitted several changes to the operation to address the deficiencies that contributed to the high number of violations and the failure of the compliance check related to the 50/50 status (see attached letter).

Specifically, those operational changes include the following:

- Es Tas has hired three managers who have significant restaurant and bar experience. This measure was implemented on June 15, 2023.
- The official job duties of the Manager position have been updated to require the Manager to significantly increase the amount of time and effort they are required to spend monitoring the front door and exits to ensure no underage individuals are allowed entry. This measure was implemented on June 15, 2023.
- Es Tas has purchased three ID scanners. Hand ID scanners are now utilized at the front door. The door staff is required to scan the IDs that are used to enter the bar. These scanners document every ID used in the scanner's memory. The scanners and their encoded memory are always available to the Police Department to assist with efforts to ensure no fraudulent IDs are being utilized. This measure was implemented on July 7, 2023.

- Es Tas hired a Security Supervisor to oversee the employees working the door to ensure those employees are checking every customer's ID and ensure there are no minors allowed on the Es Tas premises. The Security Supervisor will circulate throughout Es Tas and conduct ID checks at random times throughout all hours of operation. This measure was Implemented on July 25, 2023.
- Es Tas management and owners will conduct their own, random but regular "sting operations" to ensure there is no admittance or service of underage individuals. This measure was implemented July 18, 2023.
- Management will be attending every Police Department ID meeting. Management's pay will be dependent on ensuring no minors gain entrance to the premises, as well as continued cooperation with the Police Department. This measure was implemented July 7, 2023.
- Es Tas is requiring every fake ID to be confiscated. A cash reward will be given for every fake ID confiscated, which was raised on June 7, 2023.
- Es Tas will schedule a staff meeting every two weeks and will have a management/owner meeting weekly. The focus of these meetings will be to ensure that all measures and protocols are being followed. This measure was implemented on July 26, 2023.
- Es Tas will continue to have all staff complete IPACT training, as well as requiring them to attend at least one police ID training class annually.

**Es Tas has now applied for an 8-month license. Staff believes that if the establishment follows the new operational changes listed above, then the Chief of Police would recommend approval of the 8-month license.** The 8-month license will give staff a shorter period of time to closely monitor their performance and address any deficiencies. A 50/50 exemption will also not be issued during this 8-month period as it clearly contributed to the problem.

In addition, staff would recommend the following restrictions:

1. Failure of a compliance check during the 8-month license period may result in initiation of proceedings to determine if a penalty is warranted up to Revocation of the license.
2. If five or more minor on-premises violations are issued at Es Tas in a 24-hour period, a report will be made to the Ames City Council regarding the number of violations.
3. Any other serious violations that occur on the premise will also be reported to the Ames City Council.

4. Ames City Council has the authority to suspend a license, revoke a license, or impose a civil penalty for violations of Iowa Code Chapter 123 and/or violations of the Ames Municipal Code.
5. Es Tas maintains all of the operational changes highlighted above.

#### **123.40 Effect of revocation.**

**Any retail alcohol licensee, wine permittee, or beer permittee whose license or permit is revoked under this chapter shall not thereafter be permitted to hold a retail alcohol license, wine permit, or beer permit in the state of Iowa for a period of two years from the date of revocation.** A spouse or business associate holding ten percent or more of the capital stock or ownership interest in the business of a person whose license or permit has been revoked shall not be issued a retail alcohol license, wine permit, or beer permit, and no retail alcohol license, wine permit, or beer permit shall be issued which covers any business in which such person has a financial interest for a period of two years from the date of revocation. **If a license or permit is revoked, the premises which had been covered by the license or permit shall not be relicensed for one year.**

#### **ALTERNATIVES:**

1. Approve the application for an 8-month liquor license with the operational changes and restrictions outlined above.
2. Deny the application for an 8-month liquor license.

#### **CITY MANAGER'S RECOMMENDED ACTION:**

**Since the denial of a 12-month liquor license in July 2023, Es Tas has made several changes to its business operations and is proposing further changes. While it has been a short period of time since the denial, there have been no violations since that time including on-premises violations and compliance checks. In addition, to the operational changes, Es Tas has agreed to restrictions provided by staff to ensure the business continues to operate in a responsible manner. If they do not comply, the restrictions will allow the City Council to act quickly. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative No. 1, as noted above.**

If the City Council chooses to deny the requested license, the denial 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, it is 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.



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July 28, 2023

Chief Geoff Huff  
City of Ames Chief of Police  
*Sent via email to [Geoff.Huff@cityofames.org](mailto:Geoff.Huff@cityofames.org)*

Re: Eight Month Liquor License Application for Terry & Andy's Tacos, Inc. d/b/a Es Tas

Dear Chief Huff:

I hope this letter finds you well. As you're aware, my firm represents Terry & Andy's Tacos, Inc., which owns Es Tas. Es Tas is located at 216 Stanton Avenue. The purpose of this letter is to inform you that, in light of the recent decision of the Ames City Council not to renew Es Tas' 12 month liquor license, Es Tas has recently applied for an eight month license.

Es Tas is well aware that changes need to be made to its operations in order to ensure a safe environment that is compliant, in all ways, with the law. Most notably, those changes must focus on combatting underage individuals gaining entrance to Es Tas. With that goal in mind, Es Tas has implemented several measures to make sure that it is doing everything possible to operate consistent with all applicable laws. Specifically, those measures include the following:

- Es Tas has hired 3 managers. These managers have significant restaurant and bar experience. This measure was implemented on June 15, 2023.
- The official job duties of the Manager position have been updated to require the Manager to significantly increase the amount of time and effort they are required to spend monitoring the front door and exits to ensure no underage individuals are allowed entry. This measure was implemented on June 15, 2023.
- Es Tas has purchased three ID scanners. Hand ID scanners are now utilized at the front door. The door staff is required to scan the IDs that are used to enter the bar. These scanners document every ID used and are captured in the scanner's memory. The scanners and their encoded memory are always available to the Ames Police Department to assist with their efforts to ensure no fraudulent IDs are being utilized. Es Tas knows that use of the scanners alone is not enough to catch all fake IDs, and close visual inspections are still required, but the scanners will provide another level of inspection. This measure was implemented on July 7, 2023.
- Es Tas hired a Security Supervisor. The Security Supervisor will oversee the employees working the door to ensure those employees are checking every customer's ID and ensuring there are no minors allowed on the Es Tas premises. The Security Supervisor will conduct his/her own ID checks at random times throughout all hours of operation. The

Security Supervisor will circulate throughout Es Tas and will also monitor the patio area. This measure was Implemented on July 25, 2023.

- Es Tas management and owners will conduct their own, random but regular “sting operations” to ensure there is no admittance or service of underage individuals. This measure was implemented July 18, 2023.
- Management will be attending every Ames Police Department ID meeting. Management’s pay will be dependent on ensuring no minors gain entrance to the premises, as well as continued cooperation with the Ames Police Department. This measure was implemented July 7, 2023.
- Es Tas is requiring every fake ID to be confiscated. A cash reward will be given for every fake ID confiscated. The price paid per confiscated fake ID was raised on June 7, 2023.
- Es Tas will schedule a staff meeting every two weeks, and will have a management/owner meeting weekly. The focus of these meetings will be to ensure that all measures and protocols are being followed. This measure was implemented on July 26, 2023.
- Es Tas will continue to have all staff complete IPACT training, as well as requiring them to attend at least one police ID training class annually.

Es Tas is invested in making sure that no underage individuals are allowed on its premises. It believes that these measures will serve that purpose. If there are any other measures that you would like to see put in place, please let me know.

Moving forward, Es Tas would like its application to be considered by the Council as soon as possible. Its current license is set to expire on August 28, 2023. It appears that the next meeting of the Council is scheduled for August 8, and Es Tas would very much appreciate consideration of its application at that time. In the meantime, please let me know if you have any questions, comments, or concerns regarding this correspondence or the application submitted by Es Tas.

Thank you for your time and consideration. I look forward to hearing from you.

Respectfully,



Luke Craven

cc: Terry Cullen  
Sarah Garner-Cullen