

**LICENSES AND CONSUMER SERVICES  
LICENSE INSPECTOR'S REPORT  
Extended Hours License  
L317-50024**

**Purpose of Application:** Downtown Pizza and Diner is requesting to extend their business's hours of operation to allow the restaurant to remain open until 3:30 a.m.

**Applicant's Name (Legal Entity):** Midnight Pizza Inc.

**DBA/Trade Name:** Downtown Pizza and Diner

**Complete Address:** 10 North 5<sup>th</sup> St., Minneapolis, MN 55403

**Telephone Number:** 612-333-1144

**Current Licenses:** The applicant has held a Restaurant License at this location for eight years.

**Zoning:** B4S-2/Downtown Service District / DP/Downtown Parking Overlay District. The restaurant is a permitted use in this district. The closest residentially zoned district is over 2500 feet from the business.

**Current Authorized Hours:** 6:00 a.m. to 2:00 a.m., daily, subject to a previous Conditional Use Permit (CUP) Settlement agreement.

**Neighborhood/Ward:** Downtown West/ Ward 7

**Date of Application:** May 16, 2012

**Inspector:** Leanne Selander, 612-673-3910

**Public Hearing Requirement:** A public hearing with a 21-day notice is required for this license application. On August 17, 2012, forty notices were mailed to the following: Residents and property owners within 300 feet of the premises, the Downtown Minneapolis Neighborhood Organization, and the Warehouse District Business Association. The public hearing is scheduled for September 10, 2012 at the Regulatory, Energy and Environment Committee meeting. At the time of this report, Licensing has received one response from the community. The respondent stated that he was not in favor of granting this Extended Hours license because he thought it would be an invitation for inebriants and criminal elements to hang out downtown and loiter.

**Background:** Downtown Pizza is a 60-seat restaurant located at the Hennepin Avenue light rail stop. It does not serve liquor, have entertainment or outdoor seating. The current business owner, Abdelsalam Elezab, has owned and operated the restaurant under various names at this location since 2002.

The applicant is currently proposing to extend the hours of operation to allow the restaurant to remain open for business until 3:30 a.m. for table and to-go service. Their complete history regarding hours of operation, business operations, and licensing issues is outlined below under “History of Complaints Related to the Use” on page 3.

**Business Plan Requirements:** The Licenses and Consumer Services Division has analyzed the application and concludes that the application has answered the following:

1. **Hours of Operation:** The business plan states the licensee is flexible in regards to his requested closing time of either 3:00 a.m. or 3:30 a.m.
2. **Entertainment:** The restaurant does not have any entertainment and their business plan states they do not intend to provide any in the foreseeable future.
3. **Noise Abatement:** Noise, per se, is generally not an issue with Downtown Pizza. The restaurant is in the heart of downtown, surrounded by bars and no residences. In addition, no business is conducted outside.
4. **Litter Removal:** The business plan states that four employees are assigned to monitor for litter. Each is responsible for litter removal on the front sidewalk and rear alley at the beginning, middle and end of their shift, with a manager assigned to ensure follow through. There are two daily shifts, 9:00 am to 6:00 pm, and 6 pm to closing. They also take extra precautions to avoid oil spills when emptying the fryer.
5. **Security Plan:** Downtown Pizza reviewed their security plan with a 1<sup>st</sup> precinct lieutenant and agreed to all the MPD’s recommendations, including: Providing an ample security staff, including a designated lead, use of a “do not admit” list, a no-loitering policy, and an ID requirement for late night entry.

Although the premise does not include an outdoor area, customers tend to congregate out front, especially after bar close, since the establishment provides pizza to-go. During busy times, security is posted at the front door to prevent disruptive patrons loitering outside or trying to enter the restaurant. In addition, security cameras are situated both inside and out, and “no loitering signs” are posted.

To help curb criminal activity and disturbances inside, additional staff is assigned during busy times. The restaurant also maintains a \$4.00 minimum per person at tables during busy hours. One of the functions of staff in providing a safe environment is to monitor the restroom to ensure the line is moving efficiently and that only one person is inside at a time.

The owner recently hired off-duty officers on Fridays and Saturdays from 11:00 p.m. to 2:00 a.m., and, according to his business plan, will expand if needed. The business plan states that the owner schedules additional off-duty officers for known big events downtown. In addition, he utilizes the security of Augie’s Cabaret (of which he is the property owner) at 424 Hennepin when off-duty

officers are not working. Lastly, as the need arises, the owner will meet with the MPD to discuss on-going safety, security, or operational concerns.

### **History of Complaints Related to the Use:**

When reviewing an application for Extended Hours, Licensing takes into consideration the business's history of ordinance violations, especially serious offenses and offenses regarding hours of operation. We also review the applicant's other businesses, if applicable, as well as the area surrounding the business, in order to determine the impact that extended hours would impose. The history and issues surrounding Downtown Pizza's hours of operation are very extensive:

1. **2003** In 2003, Mr. Elezab applied for a Conditional Use Permit (CUP) to extend Downtown Pizza's hours of operation (along with his adjacent business, Downtown Tobacco) to 3:00 a.m. on weeknights and 4:00 a.m. on weekends. At that time, the establishments had grandfather rights dating to the 1963 Code which allowed them to remain open until 1:00 a.m. on weeknights and 2:00 a.m. on weekends.

The Minneapolis Police Department's 1<sup>st</sup> Precinct testified against approving the change of hours before the City Planning Commission. In a split decision, the Commission approved a provisional, 1-year CUP.

A neighboring business, citing the public safety record of the two businesses, appealed the decision. The Zoning and Planning Committee granted the appeal and denied the CUP for extended hours. Per the **2003 Findings of Fact**, *"Information provided by the police department shows a significant history of complaints related to the operation of these businesses. The businesses attract large crowds, both inside the building and congregating on the sidewalk. Fights and other disorderly conduct frequently occur among customers inside the building and among the people congregating outside. Serious assaults, including a rape and a shooting, robberies and the use and sale of illegal drugs have also occurred at these businesses in the last two years."*

Mr. Elezab subsequently filed a lawsuit in Hennepin County District Court against the City.

2. **2004** In 2004, a Fourth Judicial District **Settlement Agreement** was reached with the following terms stipulated to:
  - The City agreed to allow the businesses to remain open until 2:00 a.m. daily.
  - The City agreed to treat all similar businesses the same regarding hours of operation.
  - The businesses agreed to comply with all laws and ordinances.

3. **2006 – 2007** In 2006, Licensing fined Downtown Pizza a total of \$4200 for violating its hours of operation by remaining open past 2:00 a.m. on ten separate days. The licensee appealed and in a **2007 Mediation agreement** with the City, he agreed to pay \$1200, plus costs, with \$3000 and a 3-day suspension stayed on condition of no same or similar for one year.
4. **2008** Licensing fined Downtown Pizza \$200 for violating their hours of operation.
5. **2011** Licensing issued six citations totaling \$7700 in citations and late fees between May and July, 2011, for violating their hours of operation. When the citations were not paid or appealed within 20 days, Licensing issued a Notice of impending revocation, resulting in the immediate payment of all fines and fees.
6. **2012** In March 2012, Licensing issued two more citations totaling \$4000 for violating their hours of operation. The owner paid the citations and, shortly thereafter, hired off-duty officers and applied for an Extended Hours license.

**History of Complaints Related to Associated Businesses:** Mr. Elezab was the license holder of Downtown Tobacco, 428 Hennepin, from 2001 to 2011. As noted above, a 2003 Settlement Agreement allowed the tobacco shop to remain open until 2:00 a.m. daily. Downtown Tobacco almost always closed promptly at 2:00 a.m., but, according to police reports, while open, the business contributed significantly to criminal and loitering activity in the area of 5<sup>th</sup> and Hennepin.

1. **2008 A License Settlement Conference (LSC)** was held in June 2008 as a result of unlawful activity occurring in and outside of Downtown Tobacco. Based on information presented at the hearing, the department made a number of Findings of Fact, Conclusions and Recommendations, including:
  - In 2008, a Downtown Tobacco sales clerk (the licensee's sister) plead guilty to a 2007 **criminal charge** of Knowingly or Intentionally Delivering Drug Paraphernalia in which she sold what is known as a "crack kit" to an undercover police officer after explaining how to convert the inside of an ink pen into a crack pipe.
  - In 2008, the licensee paid a \$250 fine issued for the sale of tobacco to a minor tobacco compliance checker.
  - In 2008, the licensee paid \$220 in fines and fees for failure to comply with an order to install an operational surveillance camera.
  - A \$5000 fine was imposed with \$1704 stayed on the condition of no same or similar within two years. Over 20 license Conditions were also placed on the license.
2. **2009 and 2010** Licensing issued multiple citations in December 2009 and January 2010 to Downtown Tobacco for failing to comply with several of the

above mentioned **Conditions of License**, including not maintaining a surveillance camera. In upholding the citations, the hearing officer explained in his June 9, 2010 **Findings of Fact** that he was increasing the fines for four of the citations (for a total of \$4,600) for the following reasons:

*“(T)he licensee’s failure to provide a working surveillance camera system... constitutes a threat of harm to the public health, safety and welfare of citizens and visitors to the downtown Minneapolis area. Additionally, the Licensee unreasonably failed to comply with this important code requirement even after it formed a specific basis for the 2008 LSC agreement.”*

As a direct result of this outcome, in August 2010, Licensing held an **LSC**. The licensee admitted he failed to operate his business lawfully and failed to comply with minimum standards in order to hold a license. He voluntarily relinquished his Tobacco and Confectionery Licenses, thereby avoiding a revocation hearing.

Downtown Tobacco has remained closed and vacant since March 31, 2011.

**Other Considerations:** Considerations include:

1. The business is located in an area that has a noticeable problem with loitering and other illegal activities that tend to occur in the late night hours.

**RECOMMENDATIONS (pending public hearing):**

Per the Minneapolis Police Department, although Downtown Pizza’s security plan meets their expectations, the department does not support their request for an extension of hours due to their extensive history of violations.

**The Licenses and Consumer Services Division makes the following recommendation regarding this application to extend hours:**

The recommendation for this license application is denial.