



City of Minneapolis
Licenses and Consumer Services Division
350 South Fifth Street Room 1-C City Hall
Minneapolis, Minnesota 55415
www.minneapolismn.gov



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**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

In the Matter of License No. L247-50055 TONY'S DINER
for WINE E W/STRONG BEER

Held by:
YELLOW LANTERN LLC
ATTN: ANTHONY NICKLOW
1327 4TH ST SE
MINNEAPOLIS, MN 55414

13-0975854

This matter came before the Division of Licenses and Consumer Services at a License Settlement Conference on Monday, May 6, 2013 in Room 1C, Minneapolis City Hall. Appearing on behalf of the Licensee was Tony Nicklow; Owner of Tony's Diner. Appearing for the City were Linda Roberts; District Supervisor of Licenses and Consumer Services, Lt. Chris Hildreth; Police License Investigation Division and Michele Harvet; License Inspector. Based on information presented at the Conference, the Division makes the following findings of fact, conclusions, and recommendations:

FINDINGS OF FACT

1. Tony's Diner has held an On-Sale Wine and Strong Beer, Class E License, at this location since June, 2002.
2. The Minneapolis Police Department License Investigation Division conducts youth alcohol compliance checks in an effort to assure retail-alcohol license holders are not serving alcohol to persons under the age of 21.
3. On September 26, 2012 the Minneapolis Police Department License Investigation Division conducted a youth alcohol compliance check at Tony's Diner, located at

1327 4th Street SE, in the City of Minneapolis. Two 19 year old female shoppers were sent into the business in an attempt to purchase alcohol. The shoppers entered the establishment and went to the front ordering counter. A server approached the two shoppers and engaged in a brief conversation. The shoppers handed their ID's to the server; the server looked at the ID's and handed them back to the shoppers. The server poured a Miller Lite and handed it to the first shopper, the beer was paid for and changed was given to the shopper. The shopper who received the beer then handed it to plain clothes Minneapolis Police Officers and both shoppers left the business. The plain clothes officers entered the business approximately 30 seconds behind the shoppers and had a clear, unobstructed view of the entire incident. The transaction was completed, and the business was considered to have failed the compliance check. As a result of the compliance check failure, an administrative citation was issued to Tony's Diner in the amount of \$500.00, as detailed in a City Council Resolution. Tony's paid the \$500.00 administrative fee.

4. On March 21, 2013 the Minneapolis Police Department License Investigation Division conducted a youth alcohol compliance re-check at Tony's Diner, located at 1327 4th Street SE, in the City of Minneapolis. A 20 year old female shopper was sent into the business in an attempt to purchase alcohol. The shopper entered the establishment and went to the ordering counter. The male server took the ID, looked at it and handed it back to the shopper. The server then poured a Miller Lite from tap and handed it to the shopper. The shopper paid the server for the beer and received change from the server. The shopper then handed plain clothes Minneapolis Police Officers her beer and the change and left the business. The officers entered the business approximately 30 seconds behind the shopper and had a clear unobstructed view of the incident. The transaction was completed, the business was considered to have failed the compliance check. As a result of the compliance failure, an administrative citation was issued to Tony's in the amount of \$1000.00, as detailed in a City Council Resolution. Tony's paid the \$1000.00 administrative fee.
5. From the first compliance check failure on September 26, 2012, the female server was charged with the Sale of Liquor or Beer to Minors. Criminal charges against the male server are pending as a result of the March 21, 2013 compliance re-check failure.

CONCLUSIONS

1. On two separate occasions, employees from Tony's Diner sold alcohol to persons under the age of 21, in violation of Minneapolis City Ordinance 370.10, Minnesota Statute 340A.503 subd. 2(1), and the established compliance check policy and procedures of the City of Minneapolis. These compliance failures all occurred in a period of less than 24 months.

2. The licensee has paid the \$500.00 and \$1000.00 administrative fines related to the first and second above stated compliance check failures.

RECOMMENDATIONS

That the On-Sale Wine and Strong Beer, Class E License issued to Tony's Diner shall be subject to the following conditions and adverse license action:

1. Tony's Diner shall post, on a daily basis, a notice on their alcohol cooler that states the birthdate a person needs to have been born by in order to be served alcohol and the penalties for serving alcohol to a minor.
2. Tony's Diner shall perform four (4) self audits for serving alcohol to persons under twenty-one (21) in the twelve (12) months following the approval of this agreement by City Council. Documentation of these self audits shall be made available to Licenses and Consumer Services upon request.
3. Whenever a patron, that appears under the age of forty (40) years old, orders an alcoholic beverage, their identification must be viewed and approved by two staff members to verify legal drinking age.
4. Tony's Diner shall complete one alcohol server training (with eARM) within six (6) months following the approval of this agreement by City Council.
5. In lieu of a three day suspension, the City shall impose a \$1500 sanction. \$1000 shall be stayed for a period of one year from the signing of this agreement. The licensee shall pay \$500 of this sanction due at the time of signing this agreement.

Tony's Diner understands that the holding of a business or liquor license in the City Of Minneapolis is both a privilege and a responsibility. A minimum standard shall be met in order to hold such a license. One minimum standard is that a license holder is responsible to ensure that its business operates in compliance with all applicable laws, ordinances, and regulations. It is understood and agreed that any violation of the above Recommendations shall constitute just and proper cause for the immediate imposition of any stayed penalties. It is further understood that compliance with the above Recommendations is a requirement for continuing to hold a license and that failure to comply with any of these conditions may result in additional adverse license action.

I have read and understand the above findings of fact, conclusions, and recommendations. I agree with their contents and I agree with the above noted Recommendations. I understand that the failure of my business to adhere to this agreement may be cause for further suspension, revocation, or denial of my license. I understand that this report must be accepted and approved by the Minneapolis City Council and Mayor.

Based upon the foregoing, this agreement is FREELY & VOLUNTARILY ENTERED INTO IN GOOD FAITH:

Yellow Lantern, LLC

d/b/a Tony's Diner

By: Tony Nicklow
Tony Nicklow
Owner

Date: 6/14/13

For the City of Minneapolis:

By: Grant Wilson
Grant Wilson
Manager
Licenses & Consumer Services

Date: 6/14/13