



Request for City Council Committee Action from the Department of

Date April 19, 2006
To Public Safety & Regulatory Services Committee, the Honorable Don Samuels,
Chairperson
Referral to City Council
**Subject Rental Dwelling License revocation-2728 Stevens Ave, Owner Tom
Nyakeriga**

Recommendation: On March 14, 2006 this item was heard by the Rental License Board of Appeals. Pursuant to Section 244.1960 (f) of the Minneapolis Code of Ordinances, the Rental Licensing Board Members are requesting approval from the City Council for the revocation of the Rental Dwelling License held by Tom Nyakeriga, at 2728 Stevens Ave. The 4-unit multi family building has failed to meet the licensing standard for Conduct on Licensed Premises per Minneapolis Code of Ordinance 244.2020.

The Director of Inspections recommends that the City Council approve the Rental Licensing Board of Appeals findings and revoke the rental dwelling license held by Tom Nyakeriga for the premises at 2728 Stevens Ave. (See enclosed findings of Fact, Conclusions and Recommendations.)

Previous Directives None

Prepared or Submitted by Janine Atchison, District Supervisor 673-3715

Approved by: Rocco Forte
Rocco Forte, Assistant City Coordinator

Approved by: Henry Reimer
Henry Reimer, Director of Inspections

Permanent Review Committee (PRC) Approval _____ Not Applicable XX

Note: To determine if applicable see <http://insite/finance/purchasing/permanent-review-committee-overview.asp>

Policy Review Group (PRG) Approval ____ Date of Approval ____ Not Applicable XX
Note: The Policy Review Group is a committee co-chaired by the City Clerk and the City Coordinator that must review all requests related to establishing or changing enterprise policies.

Presenters in Committee (name, title)

Financial Impact (Check those that apply)

XX No financial impact (If checked, go directly to Background/Supporting Information).

___ Action requires an appropriation increase to the ___ Capital Budget or ___ Operating Budget.

___ Action provides increased revenue for appropriation increase.

___ Action requires use of contingency or reserves.

___ Business Plan: ___ Action is within the plan. ___ Action requires a change to plan.

___ Other financial impact (Explain):

___ Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact (use any categories that apply) Not Applicable

Neighborhood Notification

City Goals

Comprehensive Plan

Zoning Code

Other

Background/Supporting Information Attached

See: Findings of Fact

CITY OF MINNEAPOLIS
RENTAL DWELLING LICENSE BOARD OF APPEALS

**In the matter of the Rental
Dwelling License held by
Tom Nyakeriga for the
Premises at 2728 Stevens Avenue,
Minneapolis, Minnesota**

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

This matter came on for hearing before the Rental Dwelling License Board of Appeals at 1:30 p.m. on March 14, 2006 in Room 14 of the Minneapolis Public Service Center. Board chair Brian Bushay presided. Other board members present included Clinton T. Blaiser, Daisy Barton, Steve Schachtman and Wayne Jensen. Board members Paul Thomas Kjornes and Fathia Warsame were not present. Assistant City Attorney Joel M. Fussy was present as ex officio counsel to the board. Steven E. Heng, Assistant City Attorney, represented the Department of Inspections. Neither the Licensee, Tom Nyakeriga, nor counsel for the licensee appeared at the hearing.

FINDINGS OF FACT

1. Tom Nyakeriga holds a rental dwelling license for the building at 2728 Stevens Avenue South, in the City of Minneapolis. The rental license application personally filed by Mr. Nyakeriga lists himself as the owner of the building as well as the property manager responsible for the maintenance and management of the rental property. The notarized and executed rental dwelling license application filed by Mr. Nyakeriga lists his address as 6742 Perry Avenue North, Brooklyn Center, Minnesota, 55429.

2. This matter was commenced by the SAFE unit of the Minneapolis Police

Department and the Department of Inspections to revoke the rental dwelling license held by Mr. Nyakeriga for the property at 2728 Stevens Avenue South, under Minneapolis Code of Ordinances (M.C.O.) § 244.2020. Section 244.2020, "Conduct on Licensed Premises", requires a rental licensee to take appropriate action following conduct on the premises defined as disorderly under Section 244.2020(a). Specifically included within the ambit of disorderly use is "conduct by tenants and/or their guests on the licensed premises which is determined to be disorderly, in violation of [provisions] which prohibit the unlawful sale or possession of controlled substances."

3. Notice of the recommendation to revoke the license was mailed to Tom Nyakeriga on January 17, 2006. The notice was mailed to the contact address that Mr. Nyakeriga personally supplied on his rental license application, 6742 Perry Avenue North, Brooklyn Center, Minnesota, 55429.

4. On January 5, 2005, Minneapolis Police officers executed a narcotics search warrant at 2728 Stevens Avenue South. While officers were walking up the interior stairwell at the premises, a tenant of the premises, a Ms. Charlene a/k/a "Charelence" Williams, was apprehended with two suspected rocks of cocaine in her hand. The crack cocaine field-tested positive for cocaine base and weighed 0.8 grams. Cocaine is a schedule II controlled substance as defined by Minn. Stat. § 152.02, Subd. 3(d)). Possession of cocaine violates Minn. Stat. § 152.025, Subd. 2(1). The tenant was arrested for the probable cause narcotics violation.

5. On February 14, 2005, Crime Prevention Specialist Jennifer Waisanen of the Minneapolis Police Department's SAFE unit mailed a First Notice of Conduct on Licensed Premises to Mr. Nyakeriga, pursuant to M.C.O. § 244.2020. This notice informed Mr.

Nyakeriga that there had been an instance of disorderly use at the premises of 2728 Stevens Avenue South on January 5th, involving possession of narcotics. The notice was recorded as a first notice of disorderly use of the premises, informed Mr. Nyakeriga that steps should be taken to prevent further violations, and noted that further disorderly use could result in the denial, revocation, non-renewal or suspension of his rental dwelling license. The notice cited M.C.O. § 244.2020(a), informing Mr. Nyakeriga that it is a licensee's affirmative responsibility to take appropriate action following disorderly use by persons occupying the premises.

6. The first notice was mailed via certified mail to the contact address supplied by Mr. Nyakeriga and a certified mail receipt was returned confirming the delivery and receipt of the notice.

7. On September 22, 2005 Minneapolis Police officers served a narcotics search warrant at 2728 Stevens Avenue South. The search warrant was obtained after a confidential reliable informant, under the direction of Minneapolis Police, successfully made a controlled purchase of 0.2 grams of crack cocaine which field-tested positive as cocaine while inside of the premises. Cocaine is a schedule II controlled substance as defined by Minn. Stat. § 152.02, Subd. 3(d)). Sale of cocaine violates Minn. Stat. § 152.024, Subd. 1(1). Upon serving the warrant in the lower unit, officers entered the premises and seized three suspected glass crack pipes, one suspected metal crack pipe, one packet of rolling papers, and a small amount of suspected marijuana from the living room and one suspected glass crack pipe from the bedroom. An envelope was also recovered which was addressed to Ms. Williams (the same tenant who was arrested in the first incident in January) at the building's address. Ms.

Williams was again arrested, this time on disorderly house charges, as were three other occupants of the premises.

8. On October 21, 2005, Crime Prevention Specialist Jennifer Neale of the Minneapolis Police Department's SAFE unit mailed a Second Notice of Conduct on Licensed Premises to Mr. Nyakeriga, via certified mail and pursuant to M.C.O. § 244.2020. A certified mail receipt was returned confirming the delivery and receipt of the notice.

9. The second notice advised Mr. Nyakeriga that a second incident of disorderly use had occurred at the subject property and that he was *required* to respond to the SAFE unit within ten (10) days with a written management plan detailing all actions taken to respond to disorderly use and to prevent further disorderly use of the premises.

10. Mr. Nyakeriga never submitted a written management plan in response to the Second Notice of Conduct on Licensed Premises.

11. On October 21, 2005 a confidential reliable informant completed a controlled purchase of crack cocaine at 2728 Stevens Avenue South. The recovered crack cocaine field-tested positive as cocaine and weighed 0.1 grams. A search warrant for the premises was thereafter obtained and executed by Minneapolis Police officers on October 29, 2005. Upon entering the premises, officers found the lower unit to be unoccupied. Officers recovered a plastic container with suspected narcotic residue, a pay stub from the State of Minnesota for child support addressed to Ms. Williams, a plate and plastic wrappers with suspected cocaine residue, and earlier mailings from the SAFE unit addressed to Mr. Nyakeriga. Ms. Williams was stopped and cited in a vehicle that had appeared at the premises during the execution of the search warrant and two suspected crack pipes were discovered in a bag that she admitted

belonged to her. No additional notice of conduct on licensed premises was served based on this incident, however, due to its proximity to the second incident of disorderly use.

12. On December 28, 2005 Minneapolis Police officers executed a narcotics search warrant at the premises of 2728 Stevens Avenue South. The search warrant was obtained after a confidential reliable informant made a successful purchase of a substance which field-tested positive as crack cocaine and weighed 0.1 grams from a woman identified as "Charlene". Cocaine is a schedule II controlled substance as defined by Minn. Stat. § 152.02, Subd. 3(d). Sale of cocaine violates Minn. Stat. § 152.024, Subd. 1(1). The CRI also indicated that there were numerous items of suspected stolen electronic equipment within the residence. Upon service of the search warrant eight people were located inside the lower unit. Twelve rocks of crack cocaine were recovered from the living room table along with numerous suspected crack pipes. The crack cocaine weighed 1.3 grams and tested positive for cocaine. Cocaine is a schedule II controlled substance as defined by Minn. Stat. § 152.02, Subd. 3(d). Possession of cocaine violates Minn. Stat. § 152.025, Subd. 2(1). A loaded handgun was discovered in the unit along with numerous DVD's, CD's, a camera, walkie-talkies, and multiple pieces of packaged electronic consumer equipment. The resident of the unit, Ms. Williams once again, was arrested on probable cause narcotics charges and the other seven occupants of the unit present at the time were each arrested or cited on outstanding warrants or disorderly house charges.

13. On January 3, 2006 a Notice of Revocation, Denial, Non-Renewal, or Suspension of Rental License or Provisional License was sent to Mr. Nyakeriga. The notice advised Mr. Nyakeriga that both the Inspections Division and the SAFE unit would recommend to the City Council that his rental dwelling license for 2728 Stevens Avenue

South be revoked. The recommendation was made pursuant to M.C.O. § 244.2020. The notice was served via certified mail and a receipt was returned confirming the delivery and receipt of the notice at 6742 Perry Avenue North, Brooklyn Center, Minnesota, 55429.

14. On January 25, 2006 Mr. Nyakeriga filed a proper appeal of the revocation recommendation. The Licensee, in his appeal, claimed that he had, by that time, evicted the involved tenant(s) and did not do so earlier because he was unsure of what an acceptable timeline for such action was.

15. The three incidents of disorderly use that occurred on and about January 5, 2005, September 22, 2005 and December 28, 2005 are instances of disorderly use within the meaning of M.C.O. § 244.2020(a). Furthermore, Mr. Nyakeriga failed to submit a written management plan at any time in relation to these incidents, as required by M.C.O. § 244.2020(e):

When required by paragraph (d), the rental dwelling license for the premises may be denied, revoked, suspended, or not renewed if the licensee fails to submit a written management plan that satisfies the requirements set forth in paragraph (d).

16. Mr. Nyakeriga was provided with proper notification of the scheduling of the revocation hearing in front of the Rental Dwelling License Board of Appeals. As referenced in his notice, the hearing was scheduled for 1:30 p.m. on March 14, 2006 in Room 14 of the Minneapolis Public Service Center at 250 South 4th Street. The meeting was called to order at 1:40 p.m. and the hearing took place from that time continuously through 2:00 p.m. Mr. Nyakeriga failed to appear at the hearing at any point.

CONCLUSIONS

1. Three incidents of conduct determined to constitute a disorderly use and defined as disorderly in M.C.O. § 244.2020(a) by tenants and/or guests occurred on the premises of 2728 Stevens Avenue South.

2. The licensee, Tom Nyakeriga, failed to take timely, appropriate action in response to notices from SAFE concerning disorderly incidents on the premises of 2728 Stevens Avenue South.

3. The SAFE unit and the Inspections Division followed the appropriate procedural steps and provided the necessary notices as required under the Minneapolis Code of Ordinances.

4. Additionally and alternatively, the licensee failed to comply with the requirement of M.C.O. § 244.2020(e) which requires submission of a written management plan within ten days of receipt of a second notice of disorderly use. This failure provides a separate and independent basis for adverse license action, specifically inclusive of revocation, against the rental dwelling license held by the licensee at 2728 Stevens Avenue South.

5. The subject property has been the source of repeated criminal, disorderly and nuisance activity. The activities at this property have had a substantial negative impact on the surrounding community.

7. The rental dwelling license held by Tom Nyakeriga for 2728 Stevens Avenue South is subject to revocation or suspension under M.C.O. §§ 244.2020(e) (*failure to submit required management plan*) and 244.2020(f) (*third incident of disorderly use within prescribed timeframe*). Revocation of the referenced rental dwelling license is appropriate under both provisions.

RECOMMENDATION

That the rental dwelling license held by Tom Nyakeriga for the premises at 2728 Stevens Avenue South, in Minneapolis, Minnesota be revoked.

A handwritten signature in cursive script, appearing to read "Brian Bushay", written over a horizontal line.

Brian Bushay
Chair,
Rental Dwelling License Board of Appeals