



**Request for City Council Committee Action
From the Department of Regulatory Services
Licenses and Consumer Services Division**

Date August 19, 2004

To Daniel Niziolek, Chair, Public Safety & Regulatory Services Committee

Subject: Request for Adverse Action against On-Sale Liquor License held by The Lakes Restaurant, Inc. d/b/a Tonic of Uptown

Recommendation Recommend Downgrade of license to Class E and restriction of operating hours to no later than 11:00 PM, each day.

Previous Directives

Council action of February 13, 2004, at which time The Lakes Restaurant, Inc. d/b/a Tonic of Uptown 1402 West Lake Street was granted a Class B On Sale Liquor license with certain conditions.

Prepared or Submitted by Kenneth Ziegler, Inspector, Licenses and Consumer Services

Approved by James Moncur, Director, Licenses and Consumer Services

Presenters in Committee Kenneth Ziegler, Inspector, Licenses and Consumer Services

Financial Impact (Check those that apply)

No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)

Action requires an appropriation increase to the Capital Budget

Action requires an appropriation increase to the Operating Budget

Action provides increased revenue for appropriation increase

Action requires use of contingency or reserves

Other financial impact (Explain):

Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact (use any categories that apply)

Neighborhood Notification

City Goals

Comprehensive Plan

Zoning Code

Background/Supporting Information Attached

The original business plan submitted by the applicant responded to an inquiry as to the scope and nature of entertainment with “None. Music - Background”. At a public hearing concerning the license application, a representative of the licensee, responding to inquiry as to why a Class B license was being sought, stated that the Class B license was needed to fully serve patrons who might reserve the banquet areas. This was reflected in the Inspector’s Report to the City Council that recommended approval of the license application. In addition, by signing the business plan portion of the application, the licensee agreed that “any material change in the business plan must be submitted to and approved by the City of Minneapolis prior to being put into effect.”

The licensee has since been issued Administrative Citations on two (2) occasions for deviation from the approved business plan without the consent of the City of Minneapolis by permitting and enabling the use of the second floor banquet area as a public dance floor and by permitting and enabling the use of non-background music. These citations were appealed by the licensee and they were upheld by a Hearing Officer on July 21, 2004. As of this writing, the licensee has not appealed this quasi-judicial decision to the Minnesota Court of Appeals. The use of the banquet area as a public dance floor has altered the basic nature of the establishment from that of a restaurant, as is required by ordinance, to that of a nightclub which is prohibited by ordinance because the premise is located within five hundred (500) feet of a residentially zoned area.

Minneapolis Ordinance 362.395 (2) prohibits an on-sale liquor establishment located within five hundred (500) feet of a residentially zoned area from having a bar area, other than an area predominantly used as a holding area for customers waiting for restaurant seating. A bar area is defined as any area not devoted exclusively to full restaurant service to customers seated at tables, in which consumption of alcoholic beverages is the primary activity. The licensee has been issued Administrative Citations on two (2) occasions for permitting and enabling the use of the second floor banquet area as a bar area. These citations were appealed by the licensee and they were upheld by a Hearing Officer on July 21, 2004. As of this writing, the licensee has not appealed this quasi-judicial decision to the Minnesota Court of Appeals. Inspections made subsequent to the Hearing Officer’s decision have revealed that the licensee has continued to utilize the afore-mentioned “banquet area” and its environs (i.e. catwalks) as a bar area.

As previously mentioned, Chapter 536.20 of the Minneapolis Code of Ordinances prohibits the location of a nightclub within five hundred (500) feet of a residentially zoned area. The purpose of this prohibition is to minimize disturbances to nearby residents caused by business patrons who may be departing such establishments as late as 2:30 AM after an evening of socializing and dancing, accompanied by the consumption of beverage alcohol. The licensee’s establishment is located within one hundred fifty (150) feet of such an area. The office of the 10th Ward Council Member

has provided a total of seven (7) neighborhood impact statements provided by either 5th Precinct Police Officers or residents relating to the increase in “livability” crimes, primarily in the residential areas located immediately South of West Lake Street. All of these statements cite a notable increase of such incidents during the Spring and Summer of 2004, which period coincides with the commencement of business by the licensee and its continuing operation as a prohibited nightclub. The Licenses and Consumer Services Division is of the opinion that a limitation on the licensee’s hours of operation to 11:00 PM, each day would greatly inhibit its ability to operate as a nightclub, and would provide great relief to the surrounding residential area.

Minneapolis Code of Ordinances 360.100 governs the conduct of business in outdoor areas located in on-sale beverage alcohol establishments. Section (c) of this ordinance provides that, for establishments located outside of the eastbank and downtown commercial districts (the licensee’s premise is located outside of these areas), no bar shall be located in an outdoor area except a service bar for the exclusive use of employees and service shall be provided only at tables. The licensee has been issued Administrative Citations on two (2) occasions for permitting and enabling the use of the bar located in the outdoor areas as other than a service bar for the exclusive use of employees. These citations were appealed by the licensee and they were upheld by a Hearing Officer on July 21, 2004. As of this writing, the licensee has not appealed this quasi-judicial decision to the Minnesota Court of Appeals. Inspections made subsequent to the Hearing Officer’s decision have revealed that the licensee has not continued to use the bar for the direct service to patrons, however, an indirect service method was adopted that did not comply with the requirement that service be provided only to patrons seated at tables. On August 12, 2004 the applicant was instructed to discontinue the indirect service method. A subsequent inspection found the applicant to be not in violation of the cited ordinance provisions. No adverse action stemming from the operation of the outdoor service bar is recommended.