

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATION**

CC: 29R  
Amend No. \_\_\_\_\_

Date Prepared: August 07, 2009

Council Meeting Date: August 25, 2009

**TO:** Carl Swenson, City Manager  
**FROM:** Susan K. Thorpe, Deputy City Manager *SKT*  
**THROUGH:** Mary Jo Kief, City Clerk  
**PREPARED BY:** Vicki Rios, Revenue Manager *(VR)*  
**SUBJECT:** Proposed Recommendations by the City to the Arizona State Liquor Board

**RECOMMENDATION:** That following a public hearing, the Mayor and Council recommend denial to the State Liquor Board for:

1. A Location and Person Transfer for an On-Sale All Liquor License (Series 06) for Cabo Joe's, located at 8190 W. Deer Valley Road Suite #110, Damian J. Hartze, Applicant, LL#10014929.

**SUMMARY:**

Pursuant to Arizona Law the City must enter and file an order with the State Liquor Board recommending either approval or disapproval of an application to sell alcoholic beverages in the City. According to A.R.S. § 4-201(G), the applicant bears the burden of showing that the public convenience requires and the best interest of the community will be substantially served by the issuance of a license. In the event that the City Council recommends an application for denial by a two-thirds vote of the members present, a 2/3 vote of the State Liquor Board will be required to approve the application and issue a license.

Separate from this item on the agenda is a request by this applicant for a conditional use permit under the zoning code. The conditional use permit process considers the compatibility of the land use with adjacent land uses, while the liquor license looks at the location, public interest and suitability of the applicant.

**CITY CLERK USE ONLY:**

- Consent Agenda
- Carry Over to Date: \_\_\_\_\_
- Approved
- Unfinished Business (Date heard previous: \_\_\_\_\_)
- New Business
- Public Hearing: No Action Taken

ORD. # \_\_\_\_\_ RES. # \_\_\_\_\_  
LCON# \_\_\_\_\_ LIC. # 10014929  
Action Date: \_\_\_\_\_

*In making its recommendation, the Council may consider the following factors set forth in the Arizona Administrative Code:*

- 1. Petitions and testimony from persons in favor of or opposed to the issuance of a license who reside in, own or lease property in close proximity.*
- 2. The number and series of licenses in close proximity.*
- 3. Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.*
- 4. The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.*
- 5. Residential and commercial population density in close proximity.*
- 6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers.*
- 7. Effect on vehicular traffic in close proximity.*
- 8. The compatibility of the proposed business with other activity in close proximity.*
- 9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.*
- 10. The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity at least 20 days before the hearing by the Board.*
- 11. Comparison of the hours of operation of the proposed premises to the existing businesses in close proximity.*
- 12. Proximity to licensed childcare facilities as defined by A.R.S. § 36-881.*

The State recently updated their liquor license application with two significant changes:

1. The applicant is no longer required to provide the distance between the applicant's business and the nearest church or school for government (Series 05), hotel/motel (Series 11), or restaurant (Series 12) liquor license applications.
2. The State no longer requires a geographical map or list of licenses located in the vicinity for any license series.

The applicant must still provide the distance between the applicant's business and the nearest church or school for a In-State Producer (Series 01), Out-of-State Producer (Series 02), Domestic Microbrewery (Series 03), Wholesaler (Series 04), Bar (Series 06), Beer and Wine Bar (Series 07), Conveyance (Series 08), Liquor Store (Series 09), Beer and Wine Store (Series 10), Domestic Farm Winery (Series 13) and a Club (Series 14).

Licenses are issued by designated series. The licenses before the Council on this item consist of the following:

Series 06—permits a bar retailer to sell and serve spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises.

The required public hearing notice was posted at the proposed license location and the application was reviewed according to the City's Liquor License Policy. All Comments, if any, were received in the Revenue Division or in the Department of the City Clerk and are transmitted with the application. Approximately 60 comments have been received from the public on this application. The applicant has been notified of the date and time of the City Council meeting and the City's request that they be present and available to answer any questions that may arise.

Staff recommends denial of the application for Cabo Joe's (#10014929). This recommendation is based on concerns discovered by the Police Department during its investigation of the application. These concerns are as follows:

1. At the time of submitting the application to the City, the applicant must submit an explanation of any criminal activity in their past. Although the application was marked yes, no explanation was attached.
2. On question 19, on the application, Ms. Hartze marked no, as to whether she was the manager of another licensed establishment. However, on the same application, she indicated that she is the manager of the Great Alaskan Bush Company, in Phoenix, which holds a liquor license.
3. Currently, the other licensed establishment in Phoenix is subject to a Federal Tax Lien of approximately \$352,943.86 and a State of Arizona Tax Lien in the amount of \$39,336.74. There is also a recorded default judgment that would constitute a lien on the property in the amount of \$5,225.78.
4. A review of Phoenix PD records indicate seven reports were taken in a one year period as the result of covert operations pertaining to the Phoenix establishment which this applicant operates.
5. Although Ms. Hartze has now been removed as an officer of the Corporation, her driving privileges in this state are under suspension for an implied consent violation. Records show a prior conviction for Driving Under the Influence and prior arrests for Felony Driving Under the Influence and felony resisting arrests, as well as a prior conviction for leaving the scene of a non-injury accident, Driving Under the Influence, and resisting arrest. While subsequently all of these offenses have been designated misdemeanors, this person's past raises concerns regarding their ability to enforce the rules, regulations and laws of this state pertaining to alcohol consumption, even if they only manage this establishment.

Independent of the Police Department Review, there are a number of other factors upon which this recommendation is based. Arizona Liquor Department Rules require the following to be evaluated by the local governing body:

- a) *The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.*

This establishment is adjacent to new single family non-age restricted residential areas. These areas are likely to remain residential in character for decades into the future.

- b) *Residential and commercial population density in close proximity.*

This area is primarily residential, with the commercial being a neighborhood support use. This area is not designed to have commercial establishments which support the larger city as a whole. A class six establishment in a neighborhood is generally not appropriate unless it is designed to address only the needs of the neighborhood residents.

- c) *Evidence concerning the nature of the proposed business, its potential market, and its likely customers.*

While the applicant has indicated the business will operate as a restaurant, the applicant is seeking a class six license, which would enable the applicant to operate as a bar, as compared to a neighborhood restaurant.

- d) *Effect on vehicular traffic in close proximity.*

The previous retail use consisted of a low volume vitamin sales store with a projected trip count of 2.71 trips per 1,000 square feet. The proposed bar use is estimated to have a trip count of 11.34 trips per 1,000 square feet.

- e) *The compatibility of the proposed business with other activity in close proximity.*

The other businesses within this shopping center are designed to support the adjacent residential neighborhood. They are low intensity businesses designed to provide services to adjacent residents, with the center anchored by a grocery store designed to serve the adjacent residential areas. The proposed bar use is not designed to support the adjacent residential, but to provide more of a commercial use to serve a wider area.

- f) *The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting*

*the license.*

This center was built to serve the adjacent residential community. As such, the setbacks are closer than detached commercial which is designed to serve a wider area. This proposed bar use will drive residents away from the hair salon, nail shop and other shops designed to serve this residential area. The result will be a center primarily anchored by this bar. Other businesses in this center are vulnerable to a changing economy, such as the Albertson's Grocery Store and Blockbuster. Adding a new bar use may deprive them of the customer base from the adjacent residential neighborhood they were designed to serve.

Based on the investigation of the Police Department as to this application and applicant, and the staff overall review as to the appropriateness of this location, the staff is recommending the following actions pertaining to these licenses:

1. A Location and Person Transfer for an On-Sale All Liquor License (Series 06) for Cabo Joe's, located at 8190 W. Deer Valley Road Suite #110, Damian J. Hartzel, Applicant, LL#10014929. Recommend Denial.

**ATTACHMENT:**

1. Applications for Liquor Licenses

**LIQUOR LICENSE  
APPLICATIONS  
ARE ON FILE IN THE  
OFFICE OF THE CITY CLERK**