

# LIQUOR AND GAMBLING CONTROL COMMITTEE

December 2, 2015

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## Members Present:

Seymour, Berg, Connole, Hatlelid, Shomento

## Members Absent:

None

## Others Present:

City Clerk, Clerk Admin., City Manager, City Attorney, Assistant City Attorney, City Treasurer, City Engineer, Assistant City Engineer, Fire Chief, Police Chief, Captain Klug, Public Works Director, Assistant Public Works Director, Auditorium/Recreation Director, Public Information Officer, Alderman Seymour, Alderman Olson, Paul Stroklund, Shauna Downing, Dave Schwengler, Jill Schramm, Miles Parizek.

To the Honorable Mayor and All Aldermen:

Following are the minutes of the **Liquor/Gambling Control Committee** meeting called to order at 4:30 p.m. on December 2, 2015:

**1. The City Council approve the request from Rehab Services, Inc. for a site authorization to conduct a raffle at the Landing Bar, 2015 North Broadway on June 8, 2016.**

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The above motion by Alderman Shomento, seconded by Alderman Hatlelid and carried unanimously.

**2. Pursuant to the Code of Ordinances, we are requesting Committee and Council ratification of the following administratively approved requests:**

- a. **Sports On Tap for a Special Event Permit for an event located on their lower level on October 30, 2015**
- b. **Sports On Tap for a Special Event Permit for an event located on their lower level on October 31, 2015**
- c. **Minot Prairie Quilters for a permit to conduct a raffle at the Grand Hotel on December 1, 2016**
- d. **Souris Valley Animal Shelter to conduct a raffle on December 18, 2015**
- e. **Minot AFB Top 3 Association to conduct a raffle at the Sportsman's Loft on December 11, 2015**
- f. **Minot State University Softball to conduct a raffle at MSU Dome from November 1, 2015 through February 24, 2016**
- g. **MSU Native American Cultural Club to conduct a raffle at Minot State University on May 7, 2016**
- h. **Nodak Racing Club to conduct a raffle at the Holiday Inn on November 14, 2015**
- i. **Knights of Columbus to conduct a raffle at the Knights of Columbus Club Room on November 20, 2015**
- j. **North Dakota Professional Land Surveyors Society to conduct a raffle at the Grand Hotel on January 29, 2016**
- k. **Off The Vine for a Special Event Permit for an event at 115 1<sup>st</sup> St SE on November 14, 2015**
- l. **Minot Wrestling Boosters to conduct a raffle at Minot Public Schools/ Magic City Campus from November 20, 2015 through April 5, 2016.**
- m. **Minot Blue Line Club to conduct a raffle at MAYSA Arena from December 1, 2015 through February 28, 2016.**

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The above motion by Alderman Shomento, seconded by Alderman Hatlelid and carried unanimously.

### **3. Informational -Licensing Hearing Shine Time, LLC d/b/a/Sidekicks Lounge.**

City Attorney Hendershot explained the procedure that would be used for the licensing hearing. She indicated the Committee would have final decision in the matter to suspend or revoke the liquor license for Sidekicks Lounge as the issue is not put forth to Council per ordinance. Ms. Hendershot outlined the options the Committee could move forward with which are: to do nothing, impose a suspension with a definitive timeline, or revocation of the license. She stated the general order of the hearing is to have the City, who has the burden of proof, to present their case first establishing what violation(s) has occurred. The licensee will then have the opportunity to address what has been presented, and the City will have a final option to recap and close the discussion. The City Attorney stated each person addressing the Committee will first take an oath administered by Chairman Seymour before providing testimony. She concluded by saying the Committee would hear testimony for the City from Senior Officer Carmen Asham, Police Chief Olson and City Clerk Lisa Jundt.

Senior Officer Asham, stated she is the Compliance Officer for the Minot Police department and has been a police officer for 5 years. She continued by saying she had received information on October 16, 2015 the Magic City Motel was no longer operating in connection with Sidekicks Lounge and was actually closed for business. She was informed the motel was owned and operated by Spirit of Broadway, LLC while the lounge was owned and operated by Shine Time, LLC. She confirmed with representatives of both entities, the separation of ownership and operations of the two businesses. Officer Asham stated she contacted the North Dakota Secretary of State on October 16, 2015 and also confirmed that Shine Time, LLC was in fact no longer an active entity and had been involuntarily dissolved on May 22, 2015 by the State for lack of filing requirements. The State mailed correspondence to Shine Time, LLC on the date of the involuntary dissolution to inform the organization of the requirements to be reinstated to active status. On October 19, 2015 Officer Asham confirmed with the office of the Secretary of State that no action to reinstate Shine Time, LLC had taken place. She also obtained certified copies of letters that had been mailed to the organization as reference to indicate the LLC was not in good standing with the State, and indicating dissolution of their license could result in the nullification of other licenses in the State of North Dakota. Officer Asham contacted the Secretary of State's office on November 19, 2015 and received information Shine Time, LLC had resolved their issues and were now in good standing as of November 6, 2015 with a new registered agent, Kenneth Carlson; however, the City of Minot had never received a change of registered agent. She stated an undercover officer had been sent to the Magic City Motel in the attempt to rent a room, but the office door was locked. This same officer spoke with an unidentified individual on the premises and was told the motel was closed. Officer Asham drove through the parking lot herself and observed no vehicle activity around the motel rooms. She also observed through accessible windows, that mattresses were stacked without bedding, and the rooms appeared to be used as storage. She indicated she had been contacted by Sidekicks manager, Jason Huus who had concerns over the status of the liquor license since the motel was closed. Mr. Huus said it was his understanding the motel was under renovations and would reopen but there was no specified amount of time indicated for the renovations. Officer Asham again drove through motel parking lot to observe a lack of activity at the motel. It appeared to Officer Asham that Shine Time, LLC d/b/a Sidekicks was in violation of their hotel/motel liquor license. She indicated the renewal application that was filed by Shine Time LLC with the City of Minot was signed by Mike Tupa and dated May 28, 2015 six days after dissolution of the entity by the State, and the renewal did not provide information of a new registered agent as an involved party in the liquor license.

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Chief Jason Olson stated he received a tip the motel was closed so he instructed Officer Asham to conduct an investigation of the premises. He also stated he personally drove through the parking lot of the motel in late November to observe the situation and found no activity on the premises. Chief Olson provided picture documentation which pointed to the motel being closed. He said there were no curtains on many of the windows and beds and pillows were stacked. The office had no signage on the door giving information of who to contact for a room. He showed photos from December 2, 2015 which now showed a sign provided on the office door of hours of operation and contact information. He stated the sign indicated office hours of 8:00 am to 10:00 pm, but the office was closed when he arrived there at 3:00 pm. Chief Olson asked, in light of the testimony provided by Officer Asham and instructions by the City Attorney, the committee to revoke Sidekick's liquor license.

Upon questioning by Alderman Shomento about contacting the motel with the provided number, Chief Olson stated he did not attempt to make contact with the number provided. He did state that he had been told at one time the motel was being run through the Select Inn and that a person could rent a room by contacting that motel.

Lisa Jundt City Clerk testified that her office receives and processes all renewals and applications for liquor licenses. She continued by saying in the first week of June, her office had received a renewal from Shine Time, LLC signed by Mike Tupa and dated May 28, 2015. She said whenever there is a change to information of a license, the licensee is required to contact the Clerk's office in the event there are any additional requirements that must be met with regard to the change, such as background checks for new involved parties. Ms. Jundt stated the City does require information be provided of a registered agent, if applicable, for the purpose of contacting an entity with many involved parties. She said at this time, the City of Minot has not received information of Kenneth Carlson as the new registered agent nor has the City received any updated applications for Shine Time, LLC.

Upon questioning by Alderman Shomento as to the separate ownership of the liquor establishment and the motel, the City Clerk stated there is nothing in the license that would address details of ownership.

Mike Tupa of 13625 40<sup>th</sup> Street N. Stillwater, MN. Testified before the committee with regard to the indicated violations for Sidekicks Lounge. He stated he had been contacted by the Sidekicks bar manager Jason Huus on October 21<sup>st</sup>, who said the motel was closed. Mr. Tupa stated he did not believe his manager fully understood what was happening with the motel but that he was concerned how the motel status would affect the liquor license. Mr. Tupa then reached out to the owner of the motel, Harry Litke, via email to inquire as to the motel's current operation. He was informed by the owner the motel was partially closed for renovation but was still in operation. The owner stated anyone wanting a room could contact the number indicated on the motel office window to rent a room. Mr. Litke also informed Mr. Tupa that he had raised the rates to detract unwanted guests and to attract better clientele, but the motel had little interest from renters because of the increased rates so Mr. Litke has continuously brought the rate down. Mr. Tupa stated this was the first he had heard of the issue with the motel and that he contacted Mr. Litke immediately upon hearing this. Mr. Tupa was told that reservations could be obtained by contacting the phone number which directed interested individuals to the Select Inn for service. Mr. Tupa stated he has been in the bar business for a number of years owning 11 bars in several states. He said he would never knowingly misrepresent himself with regard to his business. He said he found out the entity had been dissolved in October, but that he was not aware of this when he completed the liquor renewal application in May of 2015. He stated his CPA Duane Carlson, who is also his attorney, helped him to reactive the entity and Kenneth Carlson was appointed as the registered agent for the business. A new agent was chosen because there was concern over the entity not receiving important correspondence over the last several months. The new agent, Kenneth Carlson, has no ownership interest or voting rights in the organization. Mr. Tupa stated the misinformation previously provided on the renewal was clearly a clerical error and was not provided in error deliberately. He said he prides himself in his personal and business reputation. He stated, Sidekicks employs over 30 people and also provides space for charitable gaming organizations and he would never jeopardize their livelihood by misrepresenting himself.

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When questioned by Alderman Seymour as to his relationship with the Select Inn and the Magic City Motel, Mr. Tupa stated he had no business interest in those entities. He was simply told the Magic City Motel was not being manned but rooms could be rented by contacting the Select Inn.

Upon questioning by Alderman Shomento as to the gross sales numbers for food service at Sidekicks, Mr. Tupa stated they had started the restaurant about 8 months ago and sales were approximately 30% gross overall. He stated the menu could certainly be expanded to provide more revenue.

When questioned by Alderman Connole as to the issue with the name of the registered agent not on the renewal application, Mr. Tupa stated there was no specific request for a registered agents name on the form that he could find. Alderman Connole also informed Mr. Tupa of the error on the forms sent to the state for reinstatement. Alderman Connole asked Mr. Tupa how long it would take to clear up the clerical errors previously provided to the City. Mr. Tupa stated these will be cleared up immediately.

Alderman Hatlelid commented on the conversation at that point and stated he believed if there was not motel in operation there could be no motel liquor license for the establishment.

Nicole Ross of 1929 9<sup>th</sup> Ave W, Williston ND appeared before the Committee. She stated she was the regional operations manager representing Mr. Litke's motel interest in the area. She confirmed the Magic City Motel is still open and operating but has had difficulty since it was purchased. She said all 39 rooms had been renovated in the last few years; however, the rooms had been destroyed by unruly clientele over that period. She continued, the rooms now needed to be renovated again and were in the process of being completed. The motel has also had difficulty in retaining staff over the past few years. Interested renters, she stated, are still able to call the provided phone number to acquire a room. At this time there are 5 rooms in operation and a manager was now situated in Minot to oversee both the Select Inn and the Magic City Motel. Ms. Ross stated there is also someone living in the apartment behind the motel so there is someone on the property at all times.

Upon questioning by Alderman Shomento as to the timeline of the remodeling, Ms. Ross said they had been doing a few rooms at a time because of the limited finances available for the remodeling. She said they hope to have all the rooms completed by March 2016.

Jared Knoll of 1200 32<sup>nd</sup> Ave SW, Minot, ND addressed the Committee. He stated the application for renewal did not request any other individuals but the business owners. He continued, the registered agent's exclusion should be irrelevant as he is not an owner. He also stated the ordinance states the false statements must have been made willfully, which they were not. He said Mr. Tupa's testimony pointed to the issue as an error made without malice.

When questioned by Alderman Seymour as to the intent of the license which required there be a motel with 50 rooms, Mr. Knoll indicated it was his understanding this motel had been grandfathered in as it had been operating in the past with less than 50 rooms. Mr. Knoll said the license should still be valid when there is a motel in business and still operating. He stated, Ms. Ross had indicated the motel was still in operation but undergoing renovation.

Alderman Lehner of 122 8<sup>th</sup> St SE, Alderman of Ward 1 Minot stated he was asked by the City Attorney to address a similar issue with this motel that had happened in the past. Mr. Lehner stated, at that time the motel owner only had 22 of the 39 rooms that were able to be rented. He said the owner was told then that all the rooms had to be in rentable condition to maintain the liquor license, which had been grandfathered in. Alderman Lehner indicated the owner of the motel at that time was also the owner of the bar and restaurant. This owner was given a deadline to be in compliance; the

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deadline was met and the license was not revoked. Lehner stated the understanding of the Liquor Committee then was that 39 rooms had to be in operational condition for the license to continue to exist.

City Attorney Hendershot provided closing statements and recapped the testimony of those representing the City. She stated the City has concerns of Shine Time, LLC operating under a hotel/motel liquor license. She stated the information provided to the Committee clearly shows there are violations to the current license. Those violations include the lack of disclosure of all involved parties on the application including registered agents which are required in the initial application. She said the ordinance also requires the renewing licensee must be in good standing with the State of North Dakota at the time of renewal, of which Shine Time, LLC was not. She continued it is not the responsibility of the City to see that the applicant is in good standing with the state. Ms. Hendershot stated at this time the City Clerk had not been provided with updated information as to Shine Time, LLC. Ms. Hendershot stated the City and its representatives have provided ample information to show the motel is not in operation. She recapped the events previously provided by Officer Asham and Chief Olson as to their investigation of the motel's operations. She stated there has been some past suggestion of grandfathering of this motel for 39 rooms, but that 5 operational rooms as indicated by Ms. Ross did not equate to the 50 rooms required by ordinance or even the grandfathered number of 39 rooms for this facility. In conclusion, Ms. Hendershot stated she believes the City has met its burden of proof with regard to violations of the license and the City is seeking revocation of the current liquor license.

When questioned by Alderman Connole as to the separation of the bar from the motel, Ms. Hendershot indicated the current ordinance states the bar must be residing and operating in the motel, which this licensee did not appear to be doing. She said when the facility was grandfathered in they were under the same ownership, but now the entities are separate which provides concern for the City. She stated the information provided by Mr. Tupa shows there is a clear separation between the two businesses. She believes separating the two businesses is needed to make the license compliant.

Ms. Hendershot also explained the conditions of a revocation under the City ordinance. The ordinance states a licensee cannot apply for another license for at least 5 years if the current license is revoked.

Alderman Connole asked if the Committee is able to suspend the license for 90 days for the licensee to become compliant. The City Attorney stated the Committee can suspend a license for any duration of time.

Alderman Connole asked if this licensee could qualify for a motel license under the current ordinance. The City Attorney explained the requirements of the hotel/motel license which states the motel must be in operation with at least 50 rooms and the bar must be located inside the motel as well as a restaurant.

Alderman Hatlelid addressed Mr. Tupa and stated he understood under the current situation, the bar would not qualify for a SupperClub License; however, he suggested the business apply for a retail beer and wine license even if it would cut the options for full liquor.

Mr. Tupa stated it would be difficult to operate with the current rent structure under a beer and wine license, and this would not be an option he would consider. He asked that under the circumstances the Committee allow the current motel owner the opportunity to complete renovations and allow the bar to maintain its operations until the license was brought into compliance. Mr. Tupa suggested the Committee could indicate a specific timeline for the motel to become fully operational.

Alderman Shomento made a motion to put the license on suspension until June 1, 2016 until the motel is fully operational or for the bar to have an opportunity to apply for a SupperClub License. Alderman Shomento continued by

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saying he would like to see the bar remain open during the suspension period. He then changed his motion to indicate a conditional continuation of the license and bar to operate until June 1, 2016 at which time the motel must be fully operational or the bar must apply for another eligible license.

Motion seconded by Alderman Hatlelid and passed by the following roll call vote: ayes: Shomento, Seymour, Hatlelid, Berg, Connole. nays: none.

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There being no further business, the Liquor and Gambling Control Committee meeting was adjourned at 5:28 p.m.

Respectfully Submitted,  
Lisa Jundt,  
City Clerk