

STATE OF IOWA
BEFORE THE IOWA DEPARTMENT OF REVENUE

<p>IN RE:</p> <p>Yoshi's Bar and Filipino Canteen LLC d/b/a Yoshi's Bar and Filipino Canteen 831 West 3rd Street Davenport, IA 52802</p> <p>Retail Alcohol License No. LC0048090 Outdoor Service Area</p>	<p>DOCKET NO. D-2023-00315</p> <p>DIA NO. 24ABD0010</p> <p>DIRECTOR'S DESIGNEE'S FINAL ORDER</p>
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NOW, on this 3rd day of September, 2024, this matter comes before the Director's designee, the Director's Designee of the Department of Revenue's Alcoholic Beverages Division (Department) on the appeal filed by the City of Davenport (Local Authority)¹.

STATEMENT OF CASE

On October 12, 2023, the Local Authority partially denied the renewal application for the Licensee's class "C" retail alcohol license, with the denial only applying to the outdoor service area. No official reason was provided for the denial of the outdoor service area.

A timely appeal was filed by the Licensee and a telephone hearing was held on January 22, 2024, before Administrative Law Judge Forrest A. Guddall. Brian Heyer, Assistant Corporation Counsel, appeared on behalf of the Local Authority and Mr. Yoshikoson Haddon appeared on behalf of the Licensee.

The ALJ issued a Proposed Decision on February 20, 2024, reversing the Local Authority's denial of the Licensee's outdoor service area renewal application. On February 20, 2024, a timely Notice of Appeal to the Director's Designee was filed by the Local Authority's counsel. Only the

¹ Effective July 1, 2023, and pursuant to 2023 Iowa Acts, Senate File 514, the Alcoholic Beverages Division became a part of the Iowa Department of Revenue.

Local Authority submitted a brief and no brief was submitted on behalf of the Licensee within the established schedule.

On appeal, the Local Authority argues its denial vote for the Licensee's outdoor service area be affirmed and the ALJ's decision be reversed.

FINDINGS OF FACT

The findings of fact in the ALJ's Proposed Decision are adopted and incorporated into this ruling as if set out in full.

CONCLUSIONS OF LAW

Upon review of the record in this matter, the ALJ's Proposed Decision, and the appeal briefs submitted by the parties, the undersigned adopts the conclusions of law in the ALJ's Proposed Decision are adopted and incorporated into this ruling as if set out in full.

BASIS FOR DECISION

The sale of alcoholic beverages is highly regulated "for the protection of the welfare, health, peace, morals, and safety of the people of the state" and all provisions of chapter 123 "shall be liberally construed for the accomplishment of that purpose." Iowa Code § 123.1 (Public policy declared). To maintain the highly regulated sales of alcoholic beverages, local authorities exercise their control by being the initial authority to review the applications of prospective licensees. The local authority shall either approve or disapprove the issuance of a retail alcohol license, shall endorse its approval or disapproval on the application, and shall forward the application with the necessary fee and bond, if required, to the department. Iowa Code § 123.32(2).

The Local Authority's appeal argues the Licensee does not have local authority approval for an outdoor service area, as outlined in Iowa Admin. r. 185—4.13(123). An outdoor service

area is an extension of a licensed premises upon the approval of meeting the requirements. It is true that local authority approval is needed for an outdoor service area to be granted, however approval may not be unreasonably withheld without cause. As noted by the ALJ in his Proposed Decision, “[i]t is difficult to evaluate the specific reasons for the City Council’s partial denial of licensure without wandering into the realm of speculation.” Many reasons qualify for an outdoor service area to be justly denied, such as public safety concerns or zoning requirement conflicts. In this case, the Local Authority did not provide a just reason to deny the outdoor service area and the Licensee had the right to appeal that decision to the Director. Iowa Code § 123.32(7); *see* Iowa Code § 17A.18.3.

In cases where there is a denial of a license application by a local authority, the Director’s role is to determine whether the applicant complies with all of the requirements for holding the license. Despite the local authority’s decision on a license application or renewal, “[f]inal authority on issuance or denial, however, rests with the Department.” *Diwan LLC v. Iowa Dep’t of Commerce Alcoholic Beverage Div.*, 789 N.W.2d 165. If the Director determines that the applicant complies, the Director shall order issuance of the license. The same authority the Director has on a license is true for an extension, such as an outdoor service area. The record in this matter taken as a whole establishes that the Licensee has met its burden of demonstrating compliance with the requirements for holding a retail alcohol license and that no disqualifying reason such as zoning restrictions or other public safety concerns is present that justifies limiting or precluding the Licensee’s use of its proposed outdoor service area.

ORDER

IT IS THEREFORE ORDERED that the ALJ's Proposed Decision reversing the Local Authority's denial of the Licensee's retail alcohol license renewal application is hereby **AFFIRMED** and the application **APPROVED**.

The parties are hereby notified that pursuant to Iowa Code section 17A.19, this Order constitutes final agency action for the purpose of Iowa Code chapters 17A and 123. This Order becomes final, unless a party to the hearing files a Petition for Judicial Review with the Iowa District Court within 30 days from the date of this Order.

Moreover, the parties are notified that pursuant to Iowa Code section 17A.19(5), the filing of a petition for judicial review does not automatically stay execution or enforcement of the Department's action. The Department may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review. If the Department refuses to grant the stay or other temporary remedies, the court may grant the relief.

DATED this 3rd day of September, 2024, in Ankeny, Iowa.

IOWA DEPARTMENT OF REVENUE



SAM HOERR
Director's Designee²

² Iowa Code section 123.3(17A) defines "director" as the Director of the Department of Revenue or the Director's Designee, allowing duties such as those described in Iowa Code section 123.50 to be delegated.

Copies to:

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Forrest Guddall, Administrative Law Judge (by electronic mail)

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IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
CENTRAL PANEL BUREAU

In the matter of:)	
)	Appeal No. 24ABD0010
YOSHI’S BAR AND FILIPINO)	ABD Docket No. D-2023-00315
CANTEEN, LLC)	
d/b/a Yoshi’s Bar and Filipino Canteen)	PROPOSED DECISION
831 West 3 rd Street)	
Davenport, IA 52802)	

INTRODUCTION

This appeal was transmitted to this office for a hearing and proposed decision. *See* Iowa Code § 123.32(7) (“An applicant for a retail alcohol license may appeal from the local authority's disapproval of an application for a license to the director. In the appeal the applicant shall be allowed the opportunity to demonstrate in an evidentiary hearing conducted pursuant to chapter 17A that the applicant complies with all of the requirements for holding the license. . . .”). The official administrative record was transmitted and notice of that record was taken. “Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency.” Iowa Code § 17A.14(4). This record included the electronic alcohol retail license application, notice of the license application denial by the local authority, and the administrative appeal by the appellant.

The hearing on the merits was held on January 22, 2024. Mr. Brian Heyer, Assistant Corporation Counsel, appeared on behalf of the local authority, the City of Davenport (City). Mr. Yoshikason Haddon appeared on behalf of Yoshi’s Bar and Filipino Canteen, LLC, doing business as Yoshi’s Bar and Filipino Canteen (Yoshi’s). Mr. Haddon testified on behalf of Yoshi’s. No witnesses testified for the City.

During the hearing, the City formally offered Exhibits A through D, and F. There was no objection and all of the City’s exhibits were admitted. Yoshi’s offered Exhibits A through J, as well as Exhibits designated CTS1 through CTS6. The City raised foundation, hearsay, and relevance objections to Yoshi’s Exhibit A and B. The objections were overruled and Yoshi’s exhibits were admitted, with appropriate weight to be given to them pursuant to Iowa Code §§ 17A.12(6) and 17A.14, pursuant to the following legal principles.

“. . . A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. . . . “ Iowa Code § 17A.14(1). “This section conforms with the general rule that administrative agencies are not bound by technical rules of evidence, and that generally hearsay evidence is admissible at administrative hearings.” *McConnell v. Iowa Dep’t of Job Serv.*, 327 N.W.2d 234, 237 (Iowa 1982) (citations omitted). “The presiding officer shall rule on admissibility of evidence and may, where

appropriate, take official notice of facts in accordance with all applicable requirements of law.” Iowa Admin. Code r. 185-10.21(1)(17A). Additionally, “[t]he ALJ has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material; . . .” Iowa Admin. Code r. 481-10.20(7)(e)(17A). *See Clark v. Iowa Dep't of Revenue & Fin.*, 644 N.W.2d 310, 320 (Iowa 2002) (“The administrative law judge may base the decision upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant.”). *See also* Iowa Admin. Code r. 185-1.2(123,17A) (“Promulgated under Iowa Code chapters 17A and 123, these rules shall apply to all matters before the alcoholic beverages division. . . .”). *Cf.* Iowa Admin. Code r. 185-10.21(3)(17A) (“Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues.”).

FINDINGS OF FACT

Iowa is a “control state” for alcoholic beverages. The entity responsible for that control, under Iowa Code chapter 123, is the Iowa Alcoholic Beverages Department (ABD) of the Iowa Department of Revenue (formerly under control of the Iowa Department of Commerce until July 1, 2023). Iowa Code § 123.4. Control is exercised, at least in part, by ABD’s licensure of retail businesses – like Yoshi’s located at 831 West 3rd Street in Davenport, Iowa. Licensees are required to abide by any statutes or regulations applicable pursuant to Iowa Code chapter 123.

Additionally, the relevant “local authority” also applies control to licensees or prospective licensees. Iowa Code § 123.32(2) (“The local authority shall either approve or disapprove the issuance of a retail alcohol license[.]”). Local authorities may exercise even greater control than that provided in the ABD administrative rules. “The foregoing rules shall in no way be construed as to prevent any county, city or town from adopting ordinances or regulations, which are more restrictive, governing licensed establishments within their jurisdiction.” Iowa Admin. Code r. 185-4.3(123). Here, that local control is exercised by the City of Davenport.

At the hearing before this tribunal, Haddon testified for Yoshi’s. His testimony centered on the City’s reasons raised in private meetings, the reasons put forth by City staff in public City Council meetings, and the Council Aldermen’s comments for the partial denial of Yoshi’s retail alcohol license. Again, no one testified for the City at this contested case hearing.

The issue here is the City Council’s partial denial of the renewal of Yoshi’s retail alcohol license. The denial only applied to an outdoor service area (the City Council actually approved Yoshi’s alcohol license for the entire interior of its physical structure). The City’s denial was based on a straight up-or-down vote – there were no written reasons given for each City Council Alderman’s vote. Before the vote, some City Aldermen articulated concerns or reasons for their vote, while some did not. It is difficult to evaluate the specific reasons for the City Council’s partial denial of licensure without wandering into the realm of speculation. But, it seems the overarching theme for the partial denial by the City Council was public safety, at least as can be discerned from the record.

Some historical and background context is necessary for an understanding (at least as much as can be gleaned from the record) of the parties and the issues raised in this contested case proceeding. Yoshi's has had a class "C" retail alcohol license since 2021. Yoshi's is a limited liability company and, according to the alcohol license application, it is solely owned by Mr. Haddon. *See also* <https://sos.iowa.gov/search/business/search.aspx>.¹

According to Haddon's testimony, Yoshi's is located in Ward 3 of the City and is a "red light" or high crime area. He was attempting to build a constructive business enterprise in the area and be a positive influence. Haddon claimed he had spent approximately \$25,000 to pave or upgrade the parking lot as well as approximately \$100,000 to make improvements to the property, e.g., installing a sand volleyball area, etc.

In early 2023, Yoshi's attempted to renew its alcohol license and, to that end, submitted another application for a class "C" retail alcohol license.² "A person applying for a retail alcohol license shall submit a completed application [to ABD.]" Iowa Code § 123.31(1). As part of the license renewal process, ABD referred Yoshi's alcohol license to the local authority, the City of Davenport, for approval. Then, Yoshi's licensure issue was put before the City Council on several occasions as an agenda item for consideration.

On September 20, 2023, the City Council first considered renewal of Yoshi's alcohol license. (Exhibit D). At that City Council meeting, City staff recommended denial of the license insofar as it entailed the outside service area. Assistant City Attorney Mallory Bagby spoke to the City Council. City staff recommended denial of Yoshi's outdoor service area due to safety concerns about crowd size, violence, noise levels, litter, and loitering.

Yoshi's outdoor service area exits into, or is next to, its own parking lot. It was claimed there were large crowds of Yoshi's patrons which would spill out into nearby parking lots, onto the neighboring businesses or properties, and into the immediate rights of way, e.g. sidewalks and alley. A lack of crowd control was cited by City staff to support denial.

¹ Official notice of the Iowa Secretary of State website may be taken and considered part of the record in this case. Iowa Code § 17A.14(1), (4) allows the presiding officer in an administrative contested case hearing to take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Judicial notice may be taken of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Iowa R. Evid. 5.201(b).

² "Retail alcohol license' means a . . . class 'C' . . . license issued under this chapter." Iowa Code § 123.3(45). "A class 'C' retail alcohol license (LC) allows the sale of alcoholic liquor, wine, and beer by the drink for on-premises consumption and carry-out sales of liquor, wine, beer, and mixed drinks or cocktails. The license must be issued in the name of the individuals who own the entire business. A special class "C" retail alcohol license (BW) allows the sale of wine and beer for on-premises consumption and carry-out sales of wine and beer. The license issued to holders of a special class "C" license shall clearly state on its face that the license is limited." <https://ecode360.com/35581604#42594614>, City of Davenport Municipal Code (Municipal Code) § 5.10.060(c) (last visited 1/31/2024).

At the Council meeting, the City noted the number of emergency calls regarding Yoshi's. Apparently, some calls were made by Yoshi's own staff and claimed there were 50 to 200 people milling about outside. Specifically, the City stated that there were 97 calls for service from January to September 20, 2023, and that 72 of those calls occurred in August and September alone. Bagby stated she and law enforcement met privately with Haddon in mid-August. City staff felt Yoshi's had insufficient security. It was suggested that Yoshi's close down early when problems arose, hire adequate security, and patrol the parking lot. The City contended that Yoshi's did not act on its suggestions.

Further, the City asserted that two large group fights occurred after the private meeting. Those fights resulted in arrests for disorderly contact and one hospital trip.

The noise level of live performances outdoors was another issue raised by the City. It was stated that problems with Yoshi's had escalated significantly within the prior two months. During a prior week, law enforcement spoke with Haddon about a noise complaint, Haddon stated he had a noise "variance" for the volume, but he did *not*, in fact, have that permit. Subsequently, there was another noise complaint. This time Haddon acknowledged he did not have a variance, but knew the process for applying for such a permit. Haddon was described as "somewhat" responsive to law enforcement. Yet, in the City's view Haddon was not proactive to remedy the alleged problems. Consequently, Yoshi's became a drain on police resources.

City staff believed that the recited problems were related to the outdoor service area. Therefore, City staff recommended denial of the alcohol license for only that area. The City wanted to avoid the more drastic legal step of public nuisance abatement for the entirety of Yoshi's, as an establishment.

An Alderman, Ms. Marion Meginnis, spoke to the other Council Aldermen as it was her ward. She noted only two bars were subject to nuisance abatement, that her ward was a diverse population, and was welcoming. However, Alderman Meginnis noted that she received comments or complaints from constituents regarding Yoshi's. She asked the complainants to attend the meeting, but they declined due to fears of retaliation and some even claimed threats of violence.

Some of the complaints cited by Alderman Meginnis were as follows. A business stated weekend nights were busy with people loitering, drinking alcohol, and "doing drugs" in Yoshi's parking lot and nearby areas. The complainant stated the music is loud until 1:45 a.m. and when the business asked loiterers to leave, the requests were met with threats. Another property owner stated glass and debris, loud music, and marijuana use was observed (presumably on or around Yoshi's). Yoshi's was, allegedly, not effective at curbing those problems. Another person or business said there were too many loud and unruly people about, that it was an escalating problem. The person also asserted a car, somehow associated with Yoshi's, had passengers waving guns. Alderman Meginnis stated tow truck drivers were afraid to enter the area to tow cars and that she supported the City staff recommendation to deny the outside service area license. Alderman Kelly said that "the videos" are bad, but he did not like the "narrative" being put forth. Alderman Jobgen indicated his agreement with the denial of licensure. Ultimately,

Yoshi's licensure was put forward for discussion at the next Council meeting and action was deferred.

On September 27, 2023, Attorney Bagby supplemented her presentation on Yoshi's problems for the City to the Council. (Exhibit C). According to the City, Yoshi's did not present significant problems until July of 2023 when the establishment started hosting larger events. Consequently, the police, Bagby, and others met privately with Haddon to discuss their concerns. Bagby stated the police noticed "parking lot parties" and the violence that followed. At the private meeting, City staff suggested Yoshi's monitor the parking lot for loitering, hire more security, report trespassing when appropriate, close early when problems arose, and report to and cooperate with law enforcement.

Bagby asserted to the Council that a number of violent incidents involving or implicating Yoshi's occurred. The assertion specifically included a fight involving 12 to 15 patrons, outside Yoshi's on August 4, 2023, where a firearm was apparently brandished. A vehicle was subsequently pulled over in the street where a firearm was recovered and an individual arrested. Yoshi's should have been closed at that time and, allegedly, was not.

Likewise, Bagby told the Council that on August 27, 2023, there were two fights, starting first in Yoshi's parking lot and then later on a street, which led to an arrest. Later, on September 1, 2023, there were three or more fights. Yoshi's staff could not identify the perpetrators. The incident included a victim, who was over-served alcohol and hospitalized, while another individual was arrested. Yoshi's security allegedly consisted of only one person and that person could not inform police what happened because he was breaking up yet another fight on the premises.

Bagby noted to the Council that there were large crowds at Yoshi's. The graphics presented to the Council indicated Haddon called police once when approximately 200 people were in Yoshi's parking lot, and again later that evening, when there about 100 people in the parking lot. At the time, the capacity rating for the establishment was only in the seventies (later the capacity for persons in Yoshi's was raised to somewhere in the nineties). Bagby contended that the public police force was not intended to be used for private businesses' crowd control. A list of arrests was also noted (it was acknowledged Haddon claimed there was only one arrest in Yoshi's). Notably, an eluding arrest was effected against a patron of Yoshi's and Haddon paid the bail for the arrestee. Moreover, the City claimed there were eight non-police noise complaints (with one citation was issued).

Because the foregoing litany of alleged problems occurred outside the bar itself, City staff recommended only denial of Yoshi's outdoor service area license as the least restrictive means to gain more compliance. Yoshi's licensure issue was tabled for that meeting.

On October 11, 2023, the City Council reconvened. The licensure for Yoshi's outdoor service area was again considered. (Exhibit F). Initially, Bagby answered Council questions. For instance, Yoshi's fire capacity for patrons is unaffected by the outdoor service area. Bagby reiterated that denial of the license for the outdoor service area is the least restrictive enforcement option. Moreover, Yoshi's could reapply for the outdoor service area alcohol

license in the spring of 2024. The City was not seeking to exercise the more drastic public nuisance option at that point.

Haddon spoke at the meeting on behalf of Yoshi's. Haddon cited the Seventh Amendment of the Constitution for a basis to contest the process used by the Council to deny licensure. Presumably, Haddon meant limits in the City Council meeting forum, e.g. speaking time limits and no cross-examination of witnesses, were an insufficient means to address the City staff's recommendation(s). Haddon also contended the remediation suggestions by the City for the problems cited by City staff were ambiguous. Further, Haddon stated that he refuted the City's contentions through the information contained in his Exhibits A and B, apparently presented to the Council Aldermen at some point. A local NAACP representative spoke on behalf of Yoshi's outdoor service area and felt that Haddon's information should have been made public at the City Council meeting. Several citizens, including an employee and patron, spoke at the meeting in favor of Yoshi's, emphasizing that the establishment had improved the neighborhood. One person explained that if there was a problem, Yoshi's standard operating procedure was to summon police. Further, it was claimed that security at Yoshi's had increased. Finally, it was pointed out that some of the issues raised by the City occurred outside of Yoshi's property and, therefore, could not be addressed by Yoshi's. For example, Yoshi's could not press trespassing charges if unruly persons were not on Yoshi's real property.

The City Council then briefly discussed Yoshi's licensure issue. Alderman Meginnis asked questions of the police representative. The police stated that it was difficult to determine where the responsibility lies, between the City's public policing duty versus Yoshi's private property obligations, for the crowd disturbances and overall public safety attributed to Yoshi's. Because the circumstances vary with any given situation, the answer varies. Police acknowledged that Haddon was a good owner or businessman insofar as bringing in a crowd to his establishment. But the business success exceeded Yoshi's physical capacity (sometimes more than 200 people were on or near Yoshi's, late at night). Significantly, it takes all 11 police officers on duty for that shift to clear the area, and recently police involvement occurred every weekend. After the August private meeting, Haddon had taken some steps for public safety purposes. But, police felt Yoshi's did not fully recognize the capacity problem and the drain on police services.

Alderman Lee asked about the legal effect of licensure denial in the short-term and the security camera system for Yoshi's. Alderman Lee thought Yoshi's was too small a physical area for the size of crowd described. Alderman Jobgen appeared to think the noise violation without a variance, and Haddon's incorrect assertion that he had variance, were dispositive to him. Alderman Ortiz spoke with Haddon during the meeting and explained his vote was not based on race. Rather, it was based on the insufficient number of security members present for the size or number of Yoshi's patrons. Alderman Ortiz, who is also an alcohol licensee with his own establishment, suggested turning potential patrons away when Yoshi's capacity was full. He was also concerned about people and the number of cars outside Yoshi's. Alderman Condon spoke briefly about putting the least restrictive sanction on Yoshi's.

Alderman Meginnis then moved to amend Yoshi's alcohol license application to exclude the outdoor service area. Alderman Kelly voted no, otherwise the amendment passed by an eight

to one vote. Then the City Council approved Yoshi's alcohol license, excluding the outdoor service area, by the same vote total.

Yoshi's appealed the Council's denial of an alcohol license for his outdoor service area and the matter was scheduled for a hearing before this tribunal. At the hearing, Haddon claimed that Alderman Ortiz's participation in the vote was a conflict of interest because he was a competing bar owner (and a competing retail alcohol licensee). Haddon believed Alderman Ortiz should have recused himself from the vote pursuant to Iowa Code § 68B.2A. Further, Haddon disputed the City staff's contentions and testified or presented exhibits to make the following points before this tribunal at the contested case administrative hearing.

Haddon met privately with members of the City, including City Aldermen, the police, and City attorneys at various times, and recorded at least some of the meetings. (Appellant's Exhibit F and G). The City stated at one of meetings that it was not trying to "drum up numbers [for calls for service] on [Yoshi's] business." Haddon then spliced edits of the City's contentions at Council meetings to refute what he was told in the private meeting.

First, he cuts to Bagby referencing fights involving Yoshi's patrons at the City Council meeting on September 20, 2023. (Exhibit F). The City spoke of a fight involving the brandishing of a gun on August 4, 2023, at approximately 2:40 a.m. Haddon explains that Yoshi's was closed at that time and showed surveillance footage or photos of the street near Yoshi's at approximately that same time. It does not appear that Yoshi's was open or involved in the incident.

Next, the City asserted at the Council meeting that there were two fights on August 27, 2023 – initially one in Yoshi's parking lot, then another on the street, which led to an arrest with a vehicle impounded for a report of shots fired. However, the surveillance video seems to show a traffic stop involved three patrol units, somewhat down the block on the street next to Yoshi's, with the Yoshi's crowd in the parking lot simply observing stop. No fights occurred in Yoshi's parking lot, at least in the excerpt of the video provided by Haddon.

Finally, the City stated there were three or more fights on September 1, 2023, involving Yoshi's. The City stated that one fight left a man bleeding and disoriented after being over-served, and Yoshi's staff claimed they did not see what happened. Haddon admitted that there was an arrest, that the perpetrator has been permanently banned from Yoshi's, and there 20 or fewer patrons in Yoshi's. Accordingly, there was only one fight on Yoshi's property. If there were police reports that could attribute other physical fights to Yoshi's, none were offered.

The City claimed to the Council that there were a number of "large crowd" incidents. Haddon refuted the City assertions with brief surveillance video excerpts at this hearing. For instance, police did not clear Yoshi's parking lot about 11:50 p.m. on August 5, as asserted at the Council meeting. It is noted the video only lasts a few minutes, and it is unclear whether the timer on the video is synchronized with the time cited to the City Council.

Moreover, on September 27, 2023, Haddon had been told that he could help by calling police if there was trouble during the private meeting with police (apparently before the City

Council meeting on the same day). Haddon voiced concern in the private meeting that calling police for assistance would be used against Yoshi's. Police responded that they would look objectively at the number of calls. However, the City then cited Yoshi's calls for police assistance to the Council at the meeting that very day, specifically citing the "200 people in the parking lot" call, and the request to enforce the loitering prohibition. Further, the City maintained in the Council meeting that the police department should not be used by private businesses, like Yoshi's, for crowd control even though he was told to call police if there was trouble.

The City stated to the Council there were a number of arrests associated with Yoshi's. Haddon disputed the number at this hearing by pointing out that the majority of the arrests were not associated with any police records for Yoshi's. (Exhibit CTS1).

Further, there were a number of "noise complaints (not officer initiated)" presented by the City to the Council as support for the partial license denial. There were *eight* dates listed or cited by the City at the Council meeting.³ At this hearing, Haddon presented the "calls for services log" (Exhibit CTS1) which noted noise complaints for Yoshi's on only *four* dates, inclusive of one of which he was notified about. He was issued a citation on that one occasion and later was found to have committed the noise violation. The City told the Council that Haddon had intentionally lied about his noise variance. At the hearing, Haddon testified that he was simply mistaken as to the validity of his prior noise variance.

During one recorded private meeting, Haddon was told that 55 of the 97 calls were by police, sometimes for extra patrols. Typically, the extra patrols were due to crowd size around Yoshi's. Police stated they were paying attention to Yoshi's differently than other alcohol licensed establishments.

At the hearing, Haddon contended that denial of his outdoor service area license does nothing to remediate crowd problems. Haddon maintains that the Council's action does not prevent patrons from purchasing alcoholic drinks indoors and then consuming any alcoholic drinks in the outdoor service area. (Exhibit G). He points to a phone call recording with someone at ABD on September 28, 2023, as authority for this contention. Because Yoshi's outdoor sales constitute only 1.22 percent of the establishment's alcohol sales, Haddon believes that denying the outdoor service area license would neither affect crowd size nor address the City's concerns. The City contends otherwise – a denial of the outdoor service area license would prohibit consumption of alcoholic drinks outside the interior of Yoshi's. Haddon also acknowledged that Yoshi's sold 500 admission tickets for a party, and that over 1,000 people entered the establishment, when the capacity of the interior is only 90-some people. However, Haddon points out that the party was over a 12-hour period, and the patrons were not present all at one time.

During one private meeting, City officials claimed other bar owners or licensees had to make calls for service to police for individuals who had previously been served at Yoshi's. At

³ It is noted that the calls for service exhibit indicates multiple "disturbance" entries and it is unknown whether that differs from "noise complaint." Presumably it does, hence the different nomenclature.

this hearing, Haddon explained that Yoshi's had explosive growth beginning in July of 2023 (a 74 percent increase in traffic or revenue). Haddon explained that Yoshi's rate of growth correlated with the rise in the number of calls for service (also approximately 74 percent). (Exhibit A). At the hearing before this tribunal, Haddon testified that his pre-2023 patron volume was only one-third of today's patronage and that his revenue was only one-tenth of his current revenue. Further, 90 percent of his revenue comes from sales between 10:00 p.m. and 2:00 a.m. Presumably, Haddon was contending that any increase in calls for service was merely proportional to Yoshi's business growth and to be expected.

The City stated it was not concerned so much with the activity inside Yoshi's, but rather concerned with the crowd outside the establishment (especially when there were live acts or DJs) and the consequent milling about by people on the nearby properties. The City recommended calling them if people were on other property or improperly using other businesses' parking lots. Further, the City recommended decreasing the outdoor music. The City felt Yoshi's had become a "hot spot" that needed remediation – it was drawing too many City resources every weekend to ensure public safety.

At the hearing Haddon provided some exhibits to supplement his testimony. Haddon asserted that he contacted towing companies and was informed they would, in fact, tow vehicles if there was proper signage. Then Haddon purchased "no parking" signs for a neighboring property. He also increased his security surveillance camera capabilities, including streaming availability for police. He claimed to have security install trash receptacles and pick up some trash around Yoshi's. Yoshi's began posting pro-law enforcement statements, while discouraging loitering and illegal parking (or other improper activity), on social media. (Exhibit B).

Yoshi's security personnel stated in a private meeting that it had established a standard operating procedure to react to the larger crowd size. Yoshi's also started a cover charge to limit the number of patrons. Security has become more aggressive in patrolling the parking lot, giving two warnings to people to go into the bar or leave the parking lot, then calling police if the warnings are insufficient. According to Haddon, Yoshi's tries to have individuals not loiter on the public right of ways, and attempts to have them stay on Yoshi's property. Additionally, Yoshi's utilizes metal detector wands and pats down patrons, with attendant identification checks, at the back door to increase security. Yoshi's security staff is stationed at the back door. Further, Yoshi's claims it closed the bar early on a number of occasions (August 13, September 1 and 3). (Exhibit A).

After a private meeting on August 11, 2023, additional security was hired, as follows, the following week:

- Wednesdays – 1 Guard and 1 bar back
- Thursdays – 2 guards and 1 bar back
- Fridays – 4 guards and 1 bar back and a manager
- Saturdays – 6 guards and 2 bar backs and a manager
- Sundays – 3 guards and 1 bar back and a manager

(Exhibit A).

At a private meeting, Yoshi's stated they do not have authority to patrol public rights of way. The police stated they would take care of public areas, but needed Yoshi's to regulate its own property. It appears the meeting ended with general agreement between the City and Yoshi's about eliminating outdoor noise issues and trying to limit crowd size to the occupancy limit. (Exhibit I).

Ultimately, the parties' discordant positions can be summed up as follows. Yoshi's contends that, generally, the grounds raised by the City at the Council meetings to deny a retail alcohol license to his outdoor service area are, generally, factually wrong. The only citation Haddon or Yoshi's has received was for the single noise variance offense. The only fighting arrest at Yoshi's occurred when one patron punched or physically assaulted another patron (to the point of requiring medical attention). Yoshi's contends it cannot be liable for the bad acts of patrons after they leave the establishment nor can it regulate neighboring private property interests or businesses. Finally, Yoshi's has implemented the proactive measures, some suggested by the City itself. Thus, there is not substantial evidence to support the denial of Yoshi's alcohol license for its outdoor service area.

In contrast, the City contends that the sheer amount of complaints and resources expended dealing with Yoshi's and its patrons show the establishment is becoming a problem.⁴ For instance, using all 11 police officers available on the overnight shift in that area at closing time on the weekends is unreasonable. Further, public safety is the primary goal. The City maintains it does not have to wait for public injury or harm to occur before quelling a nascent problem establishment. Finally, the City wants to balance private business interests and entertainment for its citizens with its obligation to public safety. Thus, the Council's denial of licensure for only the outdoor service area (and not Yoshi's entire alcohol license) was a good faith, reasonable decision. Accordingly, the City maintains its denial vote should be affirmed.

CONCLUSIONS OF LAW

[Iowa Code chapter 123] "shall be cited as the 'Iowa Alcoholic Beverage Control Act,' and shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. It is declared to be public policy that the traffic in alcoholic liquors is so affected with a public interest that it should be regulated to the extent of prohibiting all traffic in them, except as provided in this chapter.

⁴ It is unclear, at this point, whether the City was making a straight forward denial vote based on Yoshi's (or Haddon's) alleged lack of "good moral character." See Iowa Code § 123.3(40)(a) (definition of "good moral character"). In fact, the lack of a definitive basis for the license denial by the City is problematic in this case. It could be for any of the reasons mentioned by the Alderman, City staff, or citizens, whether cumulatively or only in part.

Iowa Code § 123.1. Chapter 123 was enacted pursuant to the State of Iowa’s police power. “Police power refers to the legislature's broad, inherent power to pass laws that promote the public health, safety, and welfare.” *Gravert v. Nebergall*, 539 N.W.2d 184, 186 (Iowa 1995) (citation omitted).

There is no personal, unlimited *right* to have an alcohol license. Rather, it is an exception to the general prohibition against the traffic of alcohol. “It is unlawful to manufacture for sale, sell, offer or keep for sale, possess, or transport alcoholic liquor, wine, or beer except upon the terms, conditions, limitations, and restrictions enumerated in this chapter.” Iowa Code § 123.2 (emphasis added). See *Zeus Corp. v. City of Decorah, Iowa*, 957 F. Supp. 1093, 1095 (N.D. Iowa 1996), *aff’d sub nom. Zeus Corp. v. City of Decorah*, 108 F.3d 1383 (8th Cir. 1997) (“... Iowa case and statutory law does not recognize one's expectation for the renewal of a liquor license as a property right.”).

An alcohol license under chapter 123 is a privilege that *may* be granted by the State to a person or business entity. “A retail alcohol license may be issued to any person who is of good moral character as defined by this chapter.” Iowa Code § 123.30(1)(a) (emphasis added). See Iowa Code § 4.1(30). Any failure to obtain a liquor license by a person *prior* to the sale of alcohol may result in the commission of a criminal offense, e.g. bootlegging. See Iowa Code § 123.59(1)

Here, Yoshi’s sought a class “C” liquor license.

Retail alcohol licenses issued under this chapter shall be of the following classes: . . .

b. Class “C”.

The holder of a class “C” retail alcohol license shall be authorized to sell alcoholic beverages to patrons by the individual drink for consumption on the premises only. However, alcoholic liquor, wine, and beer in original unopened containers may also be sold for consumption off the premises. In addition, mixed drinks or cocktails may also be sold for consumption off the premises subject to the requirements of section 123.49, subsection 2, paragraph “d”.

. . . .

Iowa Code § 123.30(3)(b)(1)(c) (emphasis added).⁵

⁵ “‘Licensed premises’ or ‘premises’ means all rooms, enclosures, contiguous areas, or places susceptible of precise description satisfactory to the director where alcoholic beverages, wine, or beer is sold or consumed under authority of a retail alcohol license, wine permit, or beer permit. A single licensed premises may consist of multiple rooms, enclosures, areas, or places if they are wholly within the confines of a single building or contiguous grounds.” Iowa Code § 123.3(29).

With a class “C” retail alcohol license come State regulatory obligations. For instance:

As a condition for issuance of a retail alcohol license or wine or beer permit, the applicant must give consent to members of the fire, police, and health departments and the building inspector of cities; the county sheriff or deputy sheriff; members of the department of public safety; representatives of the division and of the department of inspections and appeals; certified police officers; and any official county health officer to enter upon areas of the premises where alcoholic beverages are stored, served, or sold, without a warrant during business hours of the licensee or permittee to inspect for violations of this chapter or ordinances and regulations that cities and boards of supervisors may adopt. . . .

Iowa Code § 123.30(1)(b) (emphasis added).

Likewise, there is a duty on a person or business entity holding a retail alcohol license to follow any applicable State laws. For example:

A person holding a retail alcohol license under this chapter, and the person's agents or employees, shall not do any of the following:

- a. Knowingly permit any gambling, except in accordance with chapter 99B, 99D, 99F, or 99G, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license.
- b. Sell or dispense any alcoholic beverage on the premises covered by the license, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on any day of the week. . . .
- j. Knowingly permit or engage in any criminal activity on the premises covered by the license. . . .

Iowa Code § 123.49(2)(a), (b), (j). *See also* Iowa Admin. Code r. 185-4.7(1)(123).

Additionally, there are a number of State criminal statutes or prohibitions contained in Iowa Code chapter 123 that are or may be applicable to alcohol licensees. *See e.g.* Iowa Code § 123.46(2) (“ . . . A person shall not be intoxicated in a public place. . . .”); Iowa Code § 123.47(1) (“A person shall not sell, give, or otherwise supply any alcoholic beverage to any person knowing or having reasonable cause to believe that person to be under legal age.”); Iowa Code § 123.49(2)(a) (“A person holding a retail alcohol license or under this chapter, and the person's agents or employees, shall not . . . Knowingly permit any . . . immoral or disorderly conduct on the premises covered by the license.”); Iowa Code § 123.49(2)(b) (“A person holding a retail alcohol license . . . shall not . . . Sell or dispense any alcoholic beverage on the premises covered by the license, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. . . .”); Iowa Code § 123.49(2)(h) (“A person holding a retail alcohol license . . . shall not . . . Sell, give, or otherwise supply any alcoholic beverage to any person, knowing or failing to exercise

reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage.”).

Besides any applicable State regulatory or statutory requirements, in order for a person to be eligible for an alcohol license, local authority approval is required.

“Local authority” means the city council of any incorporated city in this state, or the county board of supervisors of any county in this state, which is empowered by this chapter to approve or deny applications for retail alcohol licenses; empowered to recommend that such licenses be granted and issued by the department; and empowered to take other actions reserved to them by this chapter.

Iowa Code § 123.3(30).

“The local authority shall either approve or disapprove the issuance of a retail alcohol license, shall endorse its approval or disapproval on the application, and shall forward the application with the necessary fee and bond, if required, to the [ABD] department. . . .” Iowa Code § 123.32(2). “Upon receipt of an application having been disapproved by the local authority, the administrator shall notify the applicant that the applicant may appeal the disapproval of the application to the [ABD] director.” Iowa Code § 123.32(6)(a). “An applicant for a retail alcohol license may appeal from the local authority’s disapproval of an application for a license or permit to the [ABD] director. In the appeal the applicant shall be allowed the opportunity to demonstrate in an evidentiary hearing conducted pursuant to chapter 17A that the applicant complies with all of the requirements for holding the license. . . .” Iowa Code § 123.32(7).

Here, the City’s 2023 denial of Yoshi’s outdoor service area alcohol license led to the invocation of this administrative appeal process. ABD referred this administrative matter for a hearing conducted pursuant to Iowa Code chapter 17A. *Id.* Before turning to the merits of the hearing, a review of some legal principles applicable to this decision is appropriate.

The Iowa Supreme Court and Iowa Court of Appeals have provided guidance for review of a contested case under chapter 17A. *See Grant v. Iowa Dep’t of Human Servs.*, 722 N.W.2d 169, 173 (Iowa 2006) (discussing substantial evidence) (citations omitted). “The burden of proof is a preponderance of the evidence.” *Sahu v. Iowa Bd. of Med. Examiners*, 537 N.W.2d 674, 677 (Iowa 1995) (citation omitted). “The burden is on the petitioner to show that the agency’s actions were unreasonable.” *Empire Cable of Iowa, Inc. v. Iowa Dep’t of Revenue & Fin.*, 507 N.W.2d 705, 707 (Iowa Ct. App. 1993) (citation omitted).

“In contested case proceedings, the agency is empowered to hear evidence and make findings of fact.” *R & V, Ltd. v. Iowa Dep’t of Com., Alcoholic Beverages Div.*, 470 N.W.2d 59, 61 (Iowa Ct. App. 1991). “An agency’s findings of fact are binding on the courts when they are supported by substantial evidence.” *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000) (citation omitted). “Evidence is substantial when a reasonable person could accept it as

adequate to reach the same findings.” *Bearinger v. Iowa Dep't of Transp.*, 844 N.W.2d 104, 106 (Iowa 2014) (quotation omitted).

Thus, the burden of proof is on Yoshi’s to show by a preponderance of the evidence that the City’s lacked substantial evidence for denial of its outdoor service area alcohol license. *See e.g.*, Iowa Code § 17A.19(10)(n) (“[Relief shall be granted if agency action is] [o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion.”).

Iowa Code section 17A.19(8)(g) authorizes relief from agency action that is “[u]nreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.” These terms have established meanings: “An agency’s action is ‘arbitrary’ or ‘capricious’ when it is taken without regard to the law or facts of the case.... Agency action is ‘unreasonable’ when it is ‘clearly against reason and evidence.’” . . . An abuse of discretion occurs when the agency action “rests on grounds or reasons clearly untenable or unreasonable.” . . . We have said an “‘abuse of discretion is synonymous with unreasonableness, and involves lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence.’” . . . Thus, . . . we consider whether there is a basis in law and fact for the agency’s rule and whether it lacks rationality.

Dico, Inc. v. Iowa Employment Appeal Bd., 576 N.W.2d 352, 355 (Iowa 1998) (citations omitted).

It is presumed that the local authority’s action is correct regarding alcohol licensees. *See Iowa Attorney General Opinion No. 73-6-8*, 1973 WL 324529, at *2 (Iowa A.G. June 18, 1973) (“[I]t was held that § 123.32(4) placed the burden upon the applicant to rebut a presumption that the local authority’s determination not to issue a license was not arbitrary, capricious, or without reasonable cause.”). *Cf. Tony’s Tap, Inc. v. Dep’t Of Commerce, Alcoholic Beverages Div.*, 705 N.W.2d 105 (Iowa Ct. App. 2005) (Table) (“At the hearing, the Licensee bore the heavy burden of proving that the Licensee is eligible for renewal of the liquor license, including proving that the Licensee has the requisite ‘good moral character’ to retain the license.”). Additionally, analysis of an alcohol licensee includes a review of employee conduct. *See Curtis v. De Good*, 238 Iowa 877, 884, 29 N.W.2d 225, 229 (1947) (“The [Council], in considering the application [], could properly consider not only the moral character and repute of applicant for a beer permit, but that of the persons who operated the beer establishment and the manner in which said [es]tablishment had been conducted prior to the time the new permit was to take effect.”).

At the outset, some of Yoshi’s claims can be addressed directly. Initially, Haddon contended in a City Council meeting that he thought the City’s action violated Yoshi’s Seventh Amendment rights. Whatever merits there are to this constitutional claim, administrative proceedings such as this can only preserve and not decide such claims. *See, e.g., McCracken v. Iowa Dept. of Human Services*, 595 N.W.2d 779, 785 (Iowa 1999) (citation omitted) (“To preserve constitutional issues for . . . review, a party must raise such issues at the agency

level. The party must raise such issues, even though the agency lacks authority to decide constitutional issues.”). Accordingly, this administrative proceeding does not have authority or jurisdiction to find the City’s enforcement of its municipal code, Iowa Code chapter 123, or the Iowa Administrative Code rules to be unconstitutional. However, the argument has now preserved the issue for the Iowa District Court to address if exhaustion through final agency action occurs.

As an aside, Haddon makes no explanation why his Seventh Amendment rights are even implicated in this forum. *Cf. Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 852 (Iowa 2001) (“The language makes clear the Supreme Court’s position that the Seventh Amendment does not apply to proceedings in state court.”).

Next, Haddon testified that Alderman Ortiz had a conflict of interest because he was a competing alcohol licensee when he voted on Yoshi’s alcohol license, allegedly in violation of Iowa Code § 68B.2A. However, Yoshi’s has provided no legal authority for this proposition under that statute. In fact, legal authority interpreting Iowa Code § 68B.2A speaks to “state” employees, not county or municipal employees. *T & K Roofing Co. v. Iowa Dep’t of Educ.*, 593 N.W.2d 159, 163 (Iowa 1999) (“Thus, a person must serve or be employed by the state to be governed by the conflict of interest statute.”). Iowa Admin. Code r. 351-6.2(68B) (“*Employee*’ means an individual who is a paid employee of any agency of state government.”). Regardless, even disregarding Alderman Ortiz’s vote would not prevent a quorum of the City Council to act, at least on this record, nor change the outcome of Yoshi’s licensure vote.

Then, Haddon (or Yoshi’s) contends that the denial of an alcohol license for the outdoor service area is of little consequence because if Yoshi’s had any alcohol license, then the establishment could still sell alcohol inside the building and still permit patrons to consume their drinks in the outdoor service area. He bases this assertion on a telephone conversation with ABD staff. That contention is dubious.

Any licensee having an outdoor, contiguous, discernible area on the same property on which their licensed establishment is located may serve the type of alcoholic beverage permitted by the license in the outdoor area. After a licensee satisfies the requirements of this rule, the licensee may serve and sell alcoholic beverages in both the licensee’s indoor licensed establishment and in the licensee’s outdoor area at the same time because an outdoor area is merely an extension of the licensee’s licensed premises and is not a transfer of their license. A licensee, prior to serving in the outdoor area, must file with the division: . . .

2. Local authority approval of the outdoor area.

Iowa Admin. Code r. 185-4.13(2)(123). “The foregoing [Iowa Administrative Code] rules shall in no way be construed as to prevent any county, city or town from adopting ordinances or regulations, which are more restrictive, governing licensed establishments within their jurisdiction.” Iowa Admin. Code r. 185-4.3(123). Here, the City Council did, in fact, *not* approve of Yoshi’s outdoor service area.

Likewise, the City’s municipal code may be more restrictive than the Iowa Administrative Code – the City can limit the area where alcohol can be consumed, not just sold. “A class ‘C’ retail alcohol license (LC) allows the sale of alcoholic liquor, wine, and beer by the drink for on-premises consumption and carry-out sales of liquor, wine, beer, and mixed drinks or cocktails. . . .” See <https://ecode360.com/42594646> (last visited 2/2/2024), Davenport Code § 5.10.060(C) (emphasis added). “LICENSED PREMISES — All rooms, enclosures, contiguous areas, or places where alcoholic liquor, wine, or beer are sold or consumed under the authority of a retail alcohol license.” See <https://ecode360.com/42594646> (last visited 2/2/2024), Davenport Code § 5.10.020(H) (emphasis added).

Haddon appeared to complain that the City Council’s vote violated his due process rights because the City Council meeting did not permit him to formally present evidence on his behalf as well as confront and cross-examine witnesses. As stated above, constitutional challenges can only preserve arguments in this forum and there is no right to an alcohol license by any person or business, an alcohol license is a privilege.

In contrast, if the City wishes to suspend an *existing* alcohol licensee, the City’s Code provides due process:

Hearing on suspension of liquor licenses shall be before the City Council. The hearing shall be held at the City Hall and shall be presided over by the Mayor or Mayor pro tempore. At such hearing a quorum of the Council and the Mayor or Mayor pro tempore shall be present. The licensee may be, but is not required to be, present. The licensee may be represented by an attorney of the licensee choice, which is privately retained. At such hearing, the city shall be represented by counsel from the legal department who shall present the evidence for the city. The licensee and the city may present witnesses and other relevant testimony and shall have the right to cross examine opposing witnesses, to challenge all non-witness testimony, and to make appropriate final arguments.

See <https://ecode360.com/42594646> (last visited 2/2/2024), Davenport Code § 5.10.240.

Here, the Council did not suspend Yoshi’s existing alcohol license, it simply did not renew it going forward for the outdoor service area. There simply was no specific process due Yoshi’s for the renewal of its alcohol license.

With those preliminary issues out of the way, this tribunal turns to the substantive merits of Yoshi’s appeal. In Iowa, only “person[s] of good moral character as defined by this chapter” are eligible for a retail alcohol license. Iowa Code § 123.30(1)(a).

“Person of good moral character” means any person who meets all of the following requirements:

- a. The person has such financial standing and good reputation as will satisfy the administrator that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person's operations under this chapter. . . .
- e. The requirements of this subsection apply to the following:
 - (1) Each of the officers, directors, and partners of such person.
 - (2) A person who directly or indirectly owns or controls ten percent or more of any class of stock of such person.
 - (3) A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of such person.

Iowa Code § 123.3(40)(a). *G & M, Inc. v. Iowa Dep't of Com.*, No. 00-1516, 2001 WL 293682, at *3 (Iowa Ct. App. Mar. 28, 2001) (“ABD regulations allow the administrator to consider the reputation of the individual applying for an alcohol permit.”). “Person’ means any individual, association, or partnership, any corporation, limited liability company, or other similar legal entity, any club, hotel or motel, or any municipal corporation owning or operating a bona fide airport, marina, park, coliseum, auditorium, or recreational facility in or at which the sale of alcoholic liquor, wine, or beer is only an incidental part of the ownership or operation.” Iowa Code § 123.3(39).

In addition to the statutory definition, the Iowa Legislature granted ABD the authority to promulgate Iowa Administrative Code rules applicable to licensees. “The [ABD] administrator, with the approval of the [ABD] commission and subject to chapter 17A, may adopt rules as necessary to carry out this chapter. The administrator's authority extends to, but is not limited to, the following: . . . 11. Prescribing, subject to the provisions of this chapter, the conditions and qualifications necessary for the obtaining of licenses and permits[.]” Iowa Code § 123.10(11).

The specific ABD administrative rules for alcohol license applicants state, in part, “[a]ll applicants for licenses, permits, or certificates of compliance shall comply with the following requirements, where applicable[.]” Iowa Admin. Code r. 185-4.2(123). The Iowa Administrative Code then lists four general requirements for an alcohol license.

The first relevant criteria for an alcohol license is “cleanliness.”

Cleanliness of premises. The interior and exterior of the licensed premises shall be kept clean, free of litter or rubbish, painted and in good repair. Licensees and permittees shall at all times keep and maintain their respective premises in compliance with the laws, orders, ordinances and rules of the state, county and city health and fire departments, and the Iowa department of inspections and appeals.

Iowa Admin. Code r. 185-4.2(1)(123).

At least some of the City Council Aldermen expressed concern regarding trash near Yoshi’s. To that end, Haddon testified that sometimes security will pick up the area and

submitted photos of staff allegedly picking up debris. The City did not rebut this testimony at the hearing. Moreover, there were no citations submitted by the City that Yoshi's violated any municipal ordinance regarding trash at any time (the only citation for a violation was for the noise variance, on a single occasion). There is not substantial evidence for the City to deny Yoshi's alcohol license for the outdoor service area based on cleanliness, at least on this record.

The next relevant criteria under the Iowa Administrative Code for a local authority to consider is:

Financial standing and reputation. A local authority or the administrator may consider an applicant's financial standing and good reputation in addition to the other requirements and conditions for obtaining a license, permit, or certificate of compliance, and the local authority or the administrator shall disapprove or deny an application for a license, permit, or certificate of compliance if the applicant fails to demonstrate that the applicant complies with the lawful requirements and conditions for holding the license, permit, or certificate of compliance.

Iowa Admin. Code r. 185-4.2(4)(123).

Here, there seems to be no issue raised regarding Yoshi's financial standing under Iowa Admin. Code r. 185-4.2(4)(123)(a). Compare, e.g. *Diwan LLC v. Iowa Dep't of Commerce Alcoholic Beverage Div.*, 789 N.W.2d 165 (Iowa Ct. App. 2010) (Table) (delinquency in paying tax liens was sufficient evidence of a lack of "good moral character" to justify revocation of an alcohol license due to the outstanding obligations); *Talisman, Inc. v. Iowa Alcoholic Beverage Div.*, 695 N.W.2d 505 (Iowa Ct. App. 2005) (Table) ("persistent history of utility payment delinquencies alone justifies the Council's denial"). There is not substantial evidence for the City to deny Yoshi's alcohol license for the outdoor service area based on financial standing, at least on this record.

Likewise, no one seemed to raise the other local authority criteria cited in the Iowa Administrative Code, i.e. toilet facilities or hot and cold water access, as a basis for denial of Yoshi's alcohol license. Iowa Admin. Code r. 185-4.2(2)-(3)(123). There is not substantial evidence for the City to deny Yoshi's alcohol license for the outdoor service area on these bases, at least on this record.

Accordingly, that leaves the "reputation" criteria for consideration by the City under the Iowa Administrative Code.

b. In evaluating an applicant's "good reputation," the local authority or the administrator may consider such factors as, but not limited to, the following:
(1) A pattern or practice of sales of alcoholic beverages to persons under the legal age for which the licensee or permittee, or the

licensee's or permittee's agents or employees, have pled or have been found guilty.

(2) A pattern or practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued.

(3) Sales to intoxicated persons.

(4) Licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol and the recency of such convictions.

(5) Licensee or permittee misdemeanor convictions and the recency of such convictions.

(6) A pattern or practice by the licensee or permittee, or the licensee's or permittee's agents or employees, of failing to cooperate with the department of public safety, the division, the county attorney, the county sheriff and sheriff's deputies, the city police department, or the city attorney.

(7) A pattern or practice by the licensee or permittee of violating local ordinances established by the local authority pursuant to Iowa Code section 123.39(2).

(8) A pattern or practice by the licensee of failing to report any change in the ownership or interest of the business pursuant to Iowa Code section 123.39(1) "b"(3).

Iowa Admin. Code r. 185-4.2(4)(123) (emphasis added). This requirement or criteria appears to be the general basis here for the City's denial of Yoshi's outdoor service area license.

The City Council itself, as a municipal body, articulated no specific reason for denying or disapproving Yoshi's retail alcohol license application for the outdoor service area. Presumably, the Council voted in accord with the recommendation of the City staff.

In arriving at a determination of granting or denying an application for a beer permit, the council would have a right to consider how the establishment had been operated; any complaints made of violations of the statute in such operation; its general repute and the character and record of those who managed or had charge thereof and any other fact or circumstance coming to their attention as to the general situation concerning the operation of the business under the permit sought or held.

Curtis, 29 N.W.2d at 229. Accordingly, the City's justifications (to the extent they can be discerned) for denial of Yoshi's license application bear closer scrutiny.

Obviously, Yoshi's is, to some degree, a victim of its own success. It has tremendously increased its patronage (and revenue) in recent months. With the rise in customer traffic, so has

risen the number of calls for service. Yoshi's argument that such an increase is to be expected and, thus, not a problem (or not its problem) is specious. The City has raised valid concerns.

The reports of parking lot parties, and the spillover effect of alleged negative (even criminal) behavior by Yoshi's patrons upon departure from that establishment, is concerning. The City is correct that its police force is not a personal security force for a private business. The City is also correct that Yoshi's success cannot consume all police resources every weekend at closing time. Decades ago, the Iowa Supreme Court found that an establishment, which attracted illegal (or simply negative) conduct, was sufficient to deny a liquor license on the basis of "good moral character" even though the owner was personally deemed to be of favorable moral character, and the evidence presented in the matter was a mixed bag. *See Madsen v. Town of Oakland*, 219 Iowa 216, 257 N.W. 549, 550–52 (1934). ("On the contrary, [the City Council] entertained a much more favorable opinion of his moral character and repute than the testimony introduced upon the trial of this case would seem to justify."). On the other hand, Yoshi's large crowds are a relatively recent issue and temporal proximity is a consideration.

The City, to its credit, did not seek to completely deny Yoshi's a retail alcohol license. Rather, it tried to reach a solution in the private meeting(s) with Haddon and his staff. Moreover, the City also noted that Yoshi's could reapply for an outdoor service area in the spring of 2024. The City was not acting with a heavy hand.

But, the record before this tribunal is slightly in favor of Yoshi's. The majority of the calls for service were either made by police or by Yoshi's staff. Businesses *should* contact law enforcement to keep the peace or eliminate criminal conduct, and not take matters into its own hands. Haddon's fear, that if he utilized police services to help address problems, then it would be used against him, actually came to fruition. Moreover, at least on this record, Yoshi's has addressed the City's concerns by adopting the City's suggestions. Yoshi's has increased security staff and measures, e.g. metal wands and pat downs. Yoshi's has added surveillance cameras and made that streaming information available to law enforcement. Yoshi's has publicly supported City police, warned patrons of misbehavior on social media, and banned troublesome persons. Yoshi's has implemented a cover charge to reduce crowds and closed early if circumstances warranted such action. The record shows no over-capacity citations.

It is true that Yoshi's (through Haddon) did commit a noise violation on one occasion and that Haddon's assertion of a variance, when not true, undermines his credibility. But the noise problem that has not recurred (or at least there is no other citation or violation in the record).

The assault of one patron on another is the only other blemish occurring on Yoshi's property. The other fights, alleged before the City Council, were refuted *on this record* by surveillance video or photos.

Unfortunately, an alcohol licensee may have physically assaultive patrons as evidenced by the one submitted incident report. Yet, even though an establishment with an alcohol license can be responsible for the act(s) of a patron, it is not automatically responsible – there is no strict liability (setting aside possible dram shop liability or other hypothetical scenarios). Each case depends on its own facts.

An establishment's contact with law enforcement may or may not be evidence of a lack of good moral character. Not all contact with law enforcement signifies bad moral character. Calls by staff for unruly patrons, e.g. removing a trespasser or someone committing a disturbance, are valid, and not improper, reasons to summon law enforcement by liquor license establishments. As previously noted, Yoshi's hired security staff and implemented measures to maintain order. Some of the allegations by City staff or police to the City Council cite to events *outside* of Yoshi's premises, e.g. actions occurring on nearby streets or parking areas. Without more details, not all bad acts proximal to Yoshi's physical location can be attributed to it.

Ultimately, the problems cited by the City regarding Yoshi's operation boil down to two convictions (noise variance and patron assault) and large crowds. Although those two incidents (noise violation and patron assault) are valid and proper considerations under the definition of "good moral character," those two violations are insufficient to constitute a "pattern or practice" of violating municipal ordinances and or state law. Iowa Admin. Code r. 185-4.2(4)(123). *See e.g., Iowa Beer & Liquor Control Dep't v. McBlain*, 263 N.W.2d 226, 226 (Iowa 1977) ("two 'convictions' referring to two separate sales of alcoholic beverages to minors" by employee insufficient to warrant alcohol license suspension). Regarding the "large crowds" issue, the City is correct that it does not have to wait for something bad to happen before denying an alcohol license. Again, Yoshi's has closed early on occasion, instituted a cover charge, and summoned police when necessary. Haddon is also correct that the confidential complaints cited by City Aldermen before the vote contain no specific, imminent allegations regarding Yoshi's.

Finally, a review of some alcohol licensee cases support Yoshi's position. First, in *Boger v. Iowa Dep't of Com., Alcoholic Beverages Div.*, 759 N.W.2d 812 (Iowa Ct. App. 2008) (Table), a liquor licensee appealed a suspension for allegedly allowing criminal activity (i.e. public nudity) during the Register's Annual Great Bike Ride Across Iowa (RAGBRAI) in his bowling alley. The Court of Appeals reversed the suspension because there was not substantial evidence to support the sanction. "Warning that something *might* happen and a failure to take preventive measures fall far short of knowledge that something will happen or permitting it to occur." *Boger*, 759 N.W.2d at *3 (emphasis in original). Thus, being aware, but not knowing, that individuals may patronize, or even merely attempt to patronize, Yoshi's and that the situation could devolve into an administrative violation, or even a crime, without more, may not constitute substantial evidence. However, *Boger* is of limited value because it involved a single instance on a single occasion, while here, the issue is more of an emerging problem over several months.

Second, in *S & A 786, LLC v. City of Des Moines Zoning Bd. of Adjustment*, 940 N.W.2d 44 (Iowa Ct. App. 2019) (Table), a licensee challenged a conditional use permit (CUP) revocation and prevailed. "It seems clear that the nuisance complained of is congregating homeless persons and associated substance abuse and criminal activities." *S & A 786, LLC*, 940 N.W.2d 44 at *8. There are some similarities to this case. There, people were arrested stating they purchased alcohol from the licensee. As mentioned above, the 97 law enforcement calls regarding Yoshi's in 2023 seems like a high number. But the establishment at issue in *S & A 786, LLC* skyrocketed from 336 "service" calls in 2016 to a staggering 513 "service" calls just from January 1 through October 25, 2017. In *S & A 786, LLC*, the owners were "always willing

to cooperate with police[,]” but “not given any opportunity to do so.” Likewise, here, it appears Yoshi’s is trying to work with the City.

There are differences between this case and *S & A 786, LLC*. That case was a zoning CUP case involving a public nuisance and this is more of a licensee “good moral character” case. Compare Iowa Code § 123.60 (alcohol nuisance). Also, in *S & A 786, LLC*, the licensee had no criminal citations while, here, there is one citation and conviction (noise variance).

However, after weighing the pros and cons set forth above under the applicable legal principles, the record shows that Yoshi’s has been convicted of a single noise ordinance violation, never been convicted of a zoning infraction, and never been convicted of any other misdemeanor or felony crimes. Ultimately, the City’s assertions have been sufficiently refuted on this record and do not disqualify Yoshi’s (or Haddon) from the “good moral character” standard under *McBlain*. The evidence is insufficient to constitute a “pattern or practice” of violating municipal ordinances or state law. Iowa Admin. Code r. 185-4.2(4)(123).

For the reasons stated above and after consideration of the entire record, Yoshi’s has carried its burden of proof regarding good moral character. *Tony’s Tap, Inc*, 705 N.W.2d 105 (Iowa Ct. App. 2005) (Table) (burden of proof). The liquor license denial of Yoshi’s outdoor service area by the City Council pursuant to Iowa Code § 123.32 is reversed and approved.

Finally, this decision comes with a large caveat. This decision only addresses, and is limited to, the decision by the City Council in October of 2023 for Yoshi’s retail alcohol license, and nothing else. This decision does not speak to future votes on Yoshi’s licensure by the City Council. This decision only involves review of a relatively short period of time, July of 2023 to October of 2023. Continued disturbances or complaints about Yoshi’s over a longer period of time may have resulted in a different outcome. *This decision should not be construed to speak to any other related matter, nor to any speculative, future contingencies.*

ORDER

The class “C” retail alcohol license application denial by the local authority for Yoshi’s Bar and Filipino Canteen, LLC d/b/a Yoshi’s Bar and Filipino Canteen, is hereby proposed to be REVERSED and the application APPROVED in this administrative matter. Iowa Code § 123.32(7) (“The director . . . may request an administrative law judge from the department of inspections, appeals, and licensing to conduct the evidentiary hearing and to render a proposed decision to approve or disapprove the issuance of the license.”).

“The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the administrator within the time provided in rule 10.27(17A).” Iowa Admin. Code r. 185-10.26(2)(17A). *See below.*

IT IS SO ORDERED.

Issued on February 20, 2024.

cc:

Yoshi's Bar & Filipino Canteen, LLC, d/b/a Yoshi's Bar & Filipino Canteen, 831 West 3rd St., Davenport, IA 52802 (by Certified Mail)

Yoshikason Haddon, PO Box 2102, Davenport, IA 52809, yoshihaddon@gmail.com (by AEDMS)

Brian Heyer, City of Davenport, 226 West 4th St., Davenport, IA 52801 (by AEDMS)

Alana Stamas, IDR, (By AEDMS)

ABD Staff: Steve Larson, Tyler Ackerson, Scherael Thurston-Shell, Madelyn Brooke Cutler, John Lundquist, Sable Joseph, Abigail Sills (By AEDMS)

APPEAL RIGHTS

Pursuant to the administrative rules of the division, any adversely affected party may appeal a proposed decision to the Administrator of the Alcoholic Beverages Division within thirty (30) days after issuance of the proposed decision. In addition, the Administrator may initiate review of a proposed decision on the Administrator's own motion at any time within thirty (30) days following the issuance of a proposed decision. Iowa Admin. Code r. 185-10.27(1)-(2)(17A).

Requests for review shall be sent to the Administrator of the Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, IA 50021. Unless otherwise ordered, each appealing party may file exceptions and briefs within thirty (30) days of the notice of appeal or order for review. Within thirty (30) days thereafter, any party may file a responsive brief. The Administrator may shorten or extend the briefing period as appropriate. The Administrator may resolve the appeal on the briefs or provide an opportunity for oral argument. Iowa Admin. Code r. 185-10.27(6)(17A). The administrator may affirm, reverse or modify the proposed decision.

A party who is adversely affected by the proposed decision shall not be deemed to have exhausted administrative remedies unless the adversely affected party files a request for review of the proposed decision within the time provided and the Administrator has reviewed the proposed decision and has affirmed, reversed, or modified the proposed decision.

Case Title: IN RE THE MATTER OF YOSHIS BAR AND FILIPINO CANTEEN
LLC D/B/A YOSHIS BAR AND FILIPINO CANTEEN
Case Number: 24ABD0010
Type: Proposed Decision

IT IS SO ORDERED.



Forrest Guddall, Administrative Law Judge