

BEFORE THE CITY COMMISSION OF THE CITY OF LAWRENCE, KANSAS

In this matter, the City seeks to revoke the City drinking establishment license of Taste, L.L.C., doing business as "Taste Lounge, Bar & Grill." After giving due and lawful notice, the City Commission conducted a public hearing on the matter on May 15, 2012. During the hearing, the City Commission heard evidence from City staff, from representatives of Taste, L.L.C., and from the general public. Based on the credible evidence, the City Commission makes the following findings and conclusions:

FINDINGS OF FACT

1. Taste, L.L.C., was formed as a Kansas limited liability company on July 19, 2010. The registered agent for Taste, L.L.C., is Lee Riley, who resides at 837 Eastgate Dr., Topeka, Kansas. The Taste, L.L.C., is currently delinquent in its filings with the State of Kansas and, unless it makes such filings, will forfeit its charter on July 15, 2012.

2. On October 6, 2011, in accordance with K.S.A. 41-2601 *et seq.*, the State of Kansas, Division of Alcoholic Beverage Control issued to Taste, L.L.C., Drinking Establishment License No. 10-016-3253-01. The State drinking establishment license expires October 5, 2013.

3. On October 6, 2011, in accordance with City of Lawrence, Kan., Code § 4-101 *et seq.* (Jan. 1, 2011), the City of Lawrence, Kansas, issued to Taste, L.L.C., Drinking Establishment License No. 11-00016181. The City drinking establishment license expires October 5, 2013.

4. Since July 19, 2010, Taste, L.L.C., has operated a drinking establishment, known as "Taste Lounge, Bar & Grill," at 804 West 24th Street, Lawrence, Douglas County, Kansas.

5. Since opening, "Taste Lounge, Bar & Grill" has been the scene of multiple violent crimes, including shootings, sex crimes, assaults, and batteries. The Lawrence, Kansas, Police Department receives a disproportionate number of calls for service related to the operation of "Taste Lounge, Bar & Grill."

6. In the second half of 2010 alone, the Lawrence, Kansas, Police Department responded to 23 calls for service related to incidents occurring at "Taste Lounge, Bar & Grill," including the alleged battery of a 23-year-old woman.

7. In 2011, the Lawrence, Kansas, Police Department responded to 63 calls for service related to incidents occurring at "Taste Lounge, Bar & Grill," including two alleged shootings, an alleged rape, and an alleged domestic battery.

8. In the first four months of 2012, the Lawrence, Kansas, Police Department responded to 12 calls for service related to incidents occurring at "Taste Lounge, Bar & Grill," including an alleged shooting involving an employee, an alleged rape, and an alleged domestic battery.

9. Since January 1, 2011, the Lawrence, Kansas, Police Department has responded to 75 calls for service related to incidents occurring at "Taste Lounge, Bar & Grill." During that same time period, the other 120 licensed drinking establishments in Lawrence, Kansas, averaged only 19.8 calls for service.

10. Since January 1, 2011, as it has been and is being operated, "Taste Lounge, Bar & Grill" has required almost four times, or quadruple, the number of calls for service of the average drinking establishment within the City.

11. Moreover, there are no other drinking establishments in the area of "Taste Lounge, Bar & Grill" that are contributing to the disproportionate number of calls for service.

12. The only licensed premises in the area of "Taste Lounge, Bar & Grill" are "Carlos O'Kelly's" and the "Thai House," both of which are primarily restaurants. In the time that "Taste Lounge, Bar & Grill" has been in operation, those establishments have had a combined 12 calls for service and none of those calls involved a violent crime.

13. In addition, staff at "Taste Lounge, Bar & Grill" have, -- on the many of the occasions where the Lawrence, Kansas, Police Department have responded to calls for service on the premises -- generally been uncooperative and intimidating. Many times, additional officers have had to respond to "Taste Lounge, Bar & Grill" for the protection of the investigating officers because of danger presented by employees of "Taste Lounge, Bar & Grill."

14. With respect to the alleged shooting which occurred in early 2012, involving an employee of "Taste Lounge, Bar & Grill," the District Attorney reported having difficulties securing assistance from other employees who witnessed the alleged event. In fact, the owner and employees were uncooperative during that investigation.

15. Finally, City officials have met on several occasion with the owner of Taste, L.L.C., doing business as "Taste Lounge, Bar & Grill," to discuss the situation and, hopefully, to establish a plan that would protect the health, safety, and welfare of the community from the criminal activities occurring on the premises, but each time those efforts met with considerable resistance.

16. Accordingly, based on the number of violent crimes occurring on the premises, the number of calls to the police, and ownership's unwillingness to cooperate in curtailing that activity, and in order to protect the health, safety, and welfare of the community, the City, on April 24, 2012, initiated steps to revoke the City drinking establishment license of Taste, L.L.C.

17. On April 24, 2012, the City informed Lee Riley, in person, as owner of Taste, L.L.C., doing business as "Taste Lounge, Bar & Grill" that the City would be seeking to revoke his City drinking establishment license in accordance with City of Lawrence, Kan., Code § 4-115(e) (Jan. 1, 2011) and that it would be requesting that the State, under K.S.A. 41-2651, revoke his State drinking establishment license.

18. On April 27, 2012, the City transmitted written notice of that intention to Mr. Riley via certified mail.

19. On May 15, 2012, after giving due and lawful notice, the City conducted a hearing regarding the proposed revocation of the Mr. Riley's City drinking establishment license and whether it should request the State, under K.S.A. 41-2651, to revoke his State drinking establishment license.

CONCLUSIONS OF LAW

1. The City Commission has the authority to regulate the sale of alcoholic liquor with the City of Lawrence, Kansas:

It shall be unlawful for any person [to] sell or serve any alcoholic liquor within the City without first obtaining a local license from the City Clerk in addition to a license granted by the State of Kansas.

City of Lawrence, Kan., Code § 4-106 (Jan. 1, 2011).

2. The City has enacted a number regulations governing the means by which one may obtain a City drinking establishment license and requirements for retaining any such license. See City of Lawrence, Kan., Code §§ 4-101 *et seq.* (Jan. 1, 2011).

3. Among its powers to regulate the sale of alcoholic liquor, the City Commission has the authority to penalize license holders for violations of City regulations, either by suspending, for a period of time not to exceed six months, or by revoking the license. City of Lawrence, Kan., Code § 4-112 (Jan. 1, 2011).

4. Among other grounds supporting the issuance of a penalty, the City Commission may suspend or revoke a license upon a "[d]etermination that [the] ... drinking establishment is a habitual public nuisance as defined by Section 4-116." City of Lawrence, Kan., Code § 4-115(E) (Jan. 1, 2011).

5. A drinking establishment is a "habitual public nuisance" when "it operates in a manner that habitually harms the public health, safety or welfare of the general public, neighboring properties or occupants or neighboring properties, or patrons." City of Lawrence, Kan., Code § 4-116(A) (Jan. 1, 2011).

6. The City Commission may only find that a drinking establishment is a habitual public nuisance if it finds, at the threshold, that:

- (1) The harm to the public health, safety or welfare can be fairly attributed to the operation of the ... drinking establishment. The proximity of other licensed premises or similar facilities shall be considered by the Commission in making this finding.
- (2) The harm to the public health, safety or welfare is of a habitual nature and not limited to isolated incidents of infrequent occurrence.

City of Lawrence, Kan., Code § 4-116(B) (Jan. 1, 2011).

7. Here, based on the credible evidence, the City Commission finds that the operation of "Taste Lounge, Bar & Grill," by Taste, L.L.C., habitually harms the public health, safety, and welfare of the general public, neighboring properties or occupants of neighboring properties, or patrons and, accordingly, concludes that it is an illegal habitual public nuisance.

8. In making that conclusion, the City Commission finds that, based on the evidence, the harm afforded to the public health, safety, and welfare is fairly attributable to the operation of "Taste Lounge, Bar & Grill" by Taste, L.L.C. In drawing that conclusion, the City Commission considered other licensed premises in the area, the effect of "Taste Lounge, Bar & Grill" on those operations and the fact that those neighboring premises have neither caused nor contributed to the incidents negatively impacting the public health, safety, and welfare. City of Lawrence, Kan., Code § 4-116(B) (1) (Jan. 1, 2011).

9. Additionally, based on the number of calls for service made from "Taste Lounge, Bar & Grill," the fact that those numbers are not diminishing, and ownership's reluctance to take any action to curtail criminal activities, the City Commission concludes that the danger posed is habitual and is not caused by or limited to isolated incidents of an infrequent occurrence. City of Lawrence, Kan., Code § 4-116(B) (2) (Jan. 1, 2011).

10. Having determined that "Taste Lounge, Bar & Grill," as operated by Taste, L.L.C., is a habitual public nuisance in violation of City ordinance, the City must next consider what penalty to assess. See City of Lawrence, Kan., Code § 4-116(C) (Jan. 1, 2011).

11. Specifically, during the penalty phase of its determination, the City Commission must consider:

- (1) Whether the owners and operators of the drinking establishment ... have taken actions to mitigate or eliminate the harm to the public health, safety or welfare; and
- (2) Whether the harm to the public health, safety or welfare includes violations of law on the part of the private club or drinking establishment owners, operators, employees, or patrons.

Id.

12. Here, the credible evidence discloses that the ownership of "Taste Lounge, Bar & Grill" has taken no steps whatsoever to mitigate or to eliminate the dangers and harm it poses to the public health, safety, and welfare of the community. In fact, ownership has resisted all efforts that might assist in curtailing or at least in reducing those threats.

13. Also, the City Commission concludes, as the facts bear out, the harm to public, health, safety, and welfare involves not only violations of law, but violent crime. And, that if something is not done, somebody will be -- if it has not occurred already -- seriously injured.

14. Based on a consideration of those aggravating factors, in light of the totality of the circumstances, the City Commission concludes that "Taste Lounge, Bar & Grill," as operated by Taste, L.L.C., is a habitual public nuisance and that the appropriate penalty is the revocation of City of Lawrence, Kansas, Drinking Establishment License No. 11-00016181.

15. Additionally, finding that because evidence of ongoing criminal activity and the inability of "Taste Lounge, Bar & Grill" to safely manage its establishment, the City Commission concludes that there reasonable cause exists to request a hearing pursuant to K.S.A. 2011 Supp. 41-2651(c), before the Director of the Kansas Division of Alcoholic Beverage Control to determine if the State drinking establishment license of Taste, L.L.C., should be revoked.

Conclusion

16. In conclusion, because the substantial, credible evidence in the record establishes that "Taste Lounge, Bar & Grill," as being operated by Taste, L.L.C., is an unlawful habitual public nuisance and that, accordingly, the City Commission hereby orders that City of Lawrence, Kansas, Drinking Establishment License No. 11-00016181 be revoked, effective immediately.

17. Also, because there is reasonable cause to believe that "Taste Lounge, Bar & Grill," as being operated by Taste, L.L.C., is in violation of rules and regulations promulgated by the Secretary of the Division of Alcoholic Beverage Control, the City Commission authorizes the Mayor to request, in behalf of the City Commission, a hearing before the Secretary under K.S.A. 2011 Supp. 41-2651(c) to determine whether the State Drinking Establishment License of Taste, L.L.C., should be revoke.

IT IS SO ORDERED.

Dated at Lawrence, Kansas, this ____ day of May, 2012.

Robert J. Schumm
Mayor