

Iowa Department of Inspections and Appeals
 Division of Administrative Hearings
 Wallace State Office Building – Third Floor
 Des Moines, Iowa 50319

In the matter of:)	
)	Appeal No. 21ABD2003
GERMAN BEER HAUS 1892, LLC)	ABD Docket No. D-2021-00014
d/b/a Cube Ultra Lounge)	
162 West Broadway)	
Council Bluffs, IA 51503,)	
)	
)	PROPOSED DECISION
License #LC0036658)	
)	
)	

This appeal was transmitted to this office for a hearing. A Notice of Hearing scheduled the hearing on the merits of this appeal for August 13, 2021, at 10:00 a.m. Mr. Graham C. Jura appeared on behalf of the local authority, the City of Council Bluffs (“City”). Ms. Deborah Petersen appeared on behalf of German Beer Haus 1892, LLC, doing business as Cube Ultra Lounge (“Cube”). No representative appeared for the Iowa Alcoholic Beverages Division (“ABD”). The City offered Exhibits A through N. The Cube offered Exhibits 1 through 15.

Previously, the parties requested a prehearing conference and it was held on August 10, 2021. At the prehearing conference, the Cube objected to the City’s exhibits A through K, M, and N on hearsay and relevancy grounds as some of the exhibits were not presented to the City Council when it denied the Cube’s liquor license on January 25, 2021. Likewise, the Cube objected to the testimony of four witnesses, Alice Johnson, Matt Johnson, Alisa Roth, and Taylor Reideman, also based on the fact that they did not testify or present before the City Council on January 25, 2021. Conversely, the City objected to the Cube’s Exhibits 10 through 15 on the grounds of relevancy as it addressed matters relating to other liquor license establishments. The objections were overruled and the exhibits were admitted with appropriate weight given to them pursuant to Iowa Code §§ 17A.12(6) and 17A.14; Iowa Admin. Code r. 185-10.21(17A).

At the hearing, the parties made further record of their objections to the other party’s exhibits and witnesses. The objections were overruled. “. . . 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).

Finally, the parties offered a number of stipulations regarding incidents involving the Cube in lieu of calling individual police officers to testify, which were admitted. Iowa Admin. Code r. 185-10.21(2)(17A) (“Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.”). Generally, the parties stipulated to the officers’ accuracy of their police reports and to the fact that the arrests or reported incidents involved individuals outside the Cube in a public area or on a public sidewalk. The stipulation also reflects that the police officers had no personal knowledge of anyone involved in the reports being served alcohol inside the Cube. Lastly, the parties agree that the denial of the Cube’s liquor license by the City Council was based solely on Iowa Code § 123.3(40)(a).

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 Division (ABD) of the Iowa Department of Commerce. Control is exercised, at least in part, by ABD’s licensure of retail businesses – like the Cube nightclub located in Council Bluffs, Iowa. Licensees are required to abide by any statutes or regulations applicable pursuant to Iowa Code chapter 123. Additionally, the “Local Authority” also applies control to licensees. Here, that local control is exercised by the City of Council Bluffs, and specifically the City Council.

The Cube is a class “C” licensed establishment and licensure occurred annually. It is a limited liability corporation and the sole owner appears to be Mr. Frank Hoover. The Cube’s location is in an entertainment district called the “100-Block.” This was an area that the City had planned and zoned in order to revitalize the downtown area. It has nine bars, a number of restaurants, and small or local stores for boutique shopping. It has been renovated to provide pedestrian traffic with a broad sidewalk, benches, and landscaping to make the shopping or entertainment experience enjoyable. There is some residential housing, e.g. apartments or condominiums, also located in the 100-Block. (Exhibit L).

Some background context is appropriate. Over the years, Mr. Hoover has run several businesses requiring a liquor license at the physical location of the Cube. During the years the Cube has been operating, there have been many instances where police have received calls for service in or around the Cube. Apparently, the Council members had received complaints relating to the Cube, its patrons, or incidents around the Cube. In late January or early February of 2020, the City Council approved the liquor license for the Cube after Hoover and the Cube agreed to work with the City to reduce incidents of negative or criminal conduct.

In January of 2021, the annual renewal of the Cube’s liquor license was once again before the City Council. Prior to the vote on the Cube’s liquor license, the Council Bluffs Police Department provided written information, or excerpts of police reports, to the City Council. Some of the reports documented by police and presented to the City Council were sometimes in

redacted form. (Exhibits 1 through 3). A chronology of events over the last year involving the Cube was presented to the City Council for its consideration of renewal of the Cube's liquor license. (Exhibit 1; *see also* Exhibits 2 and 3). It is unclear when the written information was first presented to the City Council. Most of the documented incidents took place in the late evening or early morning hours. Nonetheless, the following chronology is in the record and, in part, reflected in Exhibits 1 through 3.

The first incident or exhibit does not appear to have been presented to the City Council. On January 31, 2020, beginning at 1:37 a.m., a video of the exterior of the Cube was taken from across the street. (Exhibit A). The video showed a number of patrons leaving the Cube. People spilled out onto the sidewalk in front of the Cube. Cars would stop on the road or street just in front of the Cube. A police car arrived at 1:39 a.m. with its emergency lights flashing. Then a second unit arrived. It appears one person is arrested. Three more police units arrived and the street is blocked by police. Another arrest occurs. At 1:48 a.m., police started to disperse after things settled down.

On February 2, 2020, beginning at 1:43 a.m., a video again showed a large number of people exit the Cube about closing time. The mass of people seemed to move further down the sidewalk and three police cruisers appeared on scene at 1:45 a.m. The crowd partially moves into the street and traffic stopped on the street. A fourth, fifth, and sixth patrol unit appeared on camera at 1:51 a.m., but they may have been already there at the other end of 100-Block because there were many officers dispersing the crowd. Eventually, the police vacated the area by 2:04 a.m. (with one possible exception as it appears there are flashing cruiser lights reflected on the side of a building, but the presumed cruiser is off-camera).

On February 15, 2020, a police officer conducted a traffic stop in front of the Cube. (Exhibits 1 through 3). While the officer was speaking to the driver, a verbal disturbance took place between individuals outside the entrance to the Cube. The officer let the driver go as the verbal disturbance escalated to a physical altercation. Another police officer in the area began to physically fight with a person to detain them. The crowd nearby gathered and began cursing and yelling at the officers. It appeared two individuals were arrested, at least one apparently intoxicated, and other officers were summoned to control the situation, which was dangerous for law enforcement. According to the information supplied to the City Council, Cube staff were taunting and recording the officers responding and trying to control the situation.

On February 22, 2020, an officer was dispatched to assist another officer arresting a person for public urination on the outside wall of the Cube. (Exhibits 1 and B). The initial call was by Cube staff. (Stipulation). The arrestee was intoxicated. When asked initially, he indicated that he was drinking alcohol at the Cube. He described the server as a female brunette. A witness indicated the arrestee had exited the Cube. The officer went into the Cube and there was no brunette female bartender. The officer then cited Mr. Zach Aughe (Aughe), the manager of the Cube and the only bartender working, with over-serving the arrestee. Aughe relayed to police that his bouncer stated the arrestee had arrived "from next door." That citation was later dismissed by the Court.

On March 5, 2020, officers were dispatched because someone caused a disturbance in the

Cube. (Exhibit 1). Subsequently, a traffic stop was initiated on a driver. Police conferred with Cube staff and it was learned the driver had been loitering outside the Cube earlier. The driver attempted to enter the Cube, staff told the driver (an ex-Cube worker himself) that he was not permitted on the premises and was previously instructed not to come back to the Cube. The driver was cited for trespassing in the Cube. (Stipulation).

On July 17, 2020, officers were dispatched to the 100-Block near the Cube to deal with an intoxicated woman. The woman left before officers arrived. On July 18, 2020, officers were dispatched again to the area across the street from the Cube to deal with an intoxicated woman causing a disturbance. On July 26, 2020, officers were dispatched due to a disturbance between two men near the Cube. On August 15, 2020, officers were dispatched due to a woman causing a disturbance outside the Cube and wanting to return to “the Cube to fight.” The group, including the woman, were told to leave the area.

On September 4, 2020, police officers and a fire department investigator conducted a capacity check on the Cube and other businesses on 100-Block. (Exhibit C). The Cube was over capacity and violated the Iowa Governor’s Disaster Proclamation¹ due to the COVID-19 pandemic. The Cube had a rated capacity of 142 people and 165 were counted. This count did not include others who left the premises before being counted. Citations were issued. During the safety check, a disturbance began in the bar that ended with a woman arrested outside the Cube for public intoxication. (Exhibits 1 and J).² There is a video beginning at 12:40 a.m. showing individuals milling around outside the Cube. (Exhibit C; *see also* Exhibit J). It appears from the video that the doorman allows people to enter and exit. Very few people are wearing a mask. Police entered about 12:42 a.m. By 12:44 a.m., there is a steady stream of patrons leaving the Cube. It is noted that the time stamp on the video for Exhibits C and J do not match. Numerous police officers move in and out of the camera view. Later, sheriff’s deputies are on scene to assist the police officers.

On September 7, 2020, one officer detained a woman near another bar, the Black Squirrel, when a passerby began talking to the detainee and interfering with police officers’ attempt to finish their work. The detainee had allegedly been arguing in the Cube with an associate of her ex-boyfriend and also the ex-boyfriend. The group was removed from the Cube by staff at some point, but later returned. The woman claimed she was then physically assaulted outside the Cube. The Cube staff reported the woman assaulted others inside the Cube,³ then she herself was assaulted outside the Cube. The original passerby came from the direction of the Cube. Eventually, the woman was arrested and the passerby was arrested for interference and public intoxication. (Exhibit K). While the foregoing was taking place, law enforcement observed a person inside the Cube attempt to leave while placing a glass bottle of beer down his pants. That patron was arrested for public intoxication.

On September 12, 2020, officers were dispatched for a disturbance outside the Cube. On September 17, 2020, a couple were arrested for public intoxication and assault when they entered

¹ See <https://coronavirus.iowa.gov/pages/proclamations> (last visited 9/8/2021).

² The parties’ Stipulation appears to address the arrest rather than the over-capacity citation.

³ The parties’ Stipulation appears to conflict with Officer Burns’ written narrative report.

and were asked to leave to the Cube while intoxicated. The man threw a bottle at a Cube security officer. It is unknown where the man obtained the bottle. On September 25, 2020, officers observed a woman outside the Cube arguing or “challenging” the Cube security officers. The woman claimed she had been drinking alcohol inside the Cube and was arrested for disorderly conduct.

On September 26, 2020, there was a large disturbance near the Cube. One video showed a large number of people converge near the doorway of the Cube, then suddenly back away. (Exhibit D). Police arrive almost immediately. There is a body camera video. (Exhibit G). People were outside the Cube arguing, yelling, and cursing. An individual left, stated he would be back, and returned with a club according to the written record. He was arrested. Later, another male (he does not have a club) is shown on the video and arrested. It is unclear if this is the same individual. Another woman was fomenting unrest with the crowd. She appeared intoxicated, was ordered to leave, did so momentarily, and then kept yelling further down the 100-Block. She was placed under arrest, but physically resisted. A male friend of the woman then started to physically fight with or resist the police. Later, a second woman joined the physical altercation. (Exhibit E). All three were intoxicated and arrested. Another officer arrested two other intoxicated individuals who were yelling at police. Two of the arrestees stated they had been “hanging out” at the Cube according to the written report, but the video showed the women denied being at the Cube. One of the individuals that night possessed cocaine.

There was a body camera video dated October 2, 2020. (Exhibit I). The police appear to be serving a warrant and making a capacity check on the Cube.⁴ The warrant was for a server, arrested earlier that day, for two counts of over-serving patrons on a previous day. The server was the person later charged with drug possession working at the Cube.

On January 10, 2021, an intoxicated woman told an officer that she was in a verbal and physical dispute inside the Cube. The woman claimed to be assaulted by patrons and staff at the Cube. No arrests were made.

With the foregoing chronology of events compiled by the police in hand, on January 25, 2021, the City Council issued a Study Session Agenda item to discuss the Cube, apparently in the afternoon. (Exhibit 4). The City Council Agenda scheduled the liquor license application for formal action as item 7(C) later that evening. (Exhibit 5). There are videos of both the Study Session and City Council meeting. (Exhibits 6 and 7). The videos show the following.

The study session began with Council Bluffs Police Chief Timothy Carmody making a presentation and a summary of police interaction with the public at or near the Cube. He explained to the Council that he started approximately six years earlier by meeting with a community group to make the 100-Block as successful as possible. Since that time, and based on law enforcement’s interactions with the general public, the Cube, the Cube’s owner, or the Cube’s staff, Carmody no longer recommended renewing the Cube’s liquor license. He could not recall ever recommending denial of a liquor license before, either as Police Chief in Council

⁴Exhibit G, the body camera video from September 26, 2020, would not play. The audio played, and it sounded as if officers were trying to deliver some paperwork to Mr. Zach Aughe.

Bluffs or previously while he was Police Chief for 10 years in Fort Dodge, Iowa.

Next, the Cube's attorney presented to the Council and pointed out that the vast majority of the incidents involved individuals not employed by the Cube or not in the physical confines of the Cube. Further, the Cube itself initiated at least one of the service calls for an individual's criminal trespass in the Cube. Moreover, police would routinely park at the end of the block near the Cube for community caretaking purposes. The fact that there are multiple alcohol establishments in the immediate area means that it is impossible to determine whether the individuals causing trouble were ever served alcohol at the Cube. Alcohol-related misbehavior and criminal activity are a societal problem, not just a problem attributable to the Cube. It would be unfair and speculative to assign the problems in 100-Block, even those occurring near the Cube, solely to the Cube.

Council member, Mr. Chad Hannan, was upset that the staff were allegedly recording an incident between police and individuals being arrested in the public area of 100-Block and allegedly taunting the officers only about a week after approval of the Cube's liquor license in 2020. Council member, Mr. Roger Sandau, echoed Hannan's concern. The Cube pointed out that its manager is contesting the capacity and masking citations. The Cube also explained that the use of contracted promoters (with the promoter's own, private security staff) may have been responsible for some of the trouble associated with or around the Cube.

Lieutenant Geer presented and said that, generally, officers will inquire as to where an arrestee was drinking alcohol and the response will frequently be the Cube. Geer did not believe law enforcement drew unreasonable inferences from the facts included in the documentation presented to the Council ("we are smart," we've done this more than one day"). Geer said law enforcement was not "picking on" the Cube. According to Geer, having 50 to 60 people near the street with multiple police cruisers present is a danger. Geer stated he asked for video from the Cube multiple times and been told that the equipment was broken. Geer stated the Cube's owner, Mr. Frank Hoover (the sole shareholder of the limited liability corporation), told him that Aughe would have to provide the video because he was not technologically proficient. Ultimately, the police never received any video from the Cube. Geer believed the Cube purposely avoided providing video. Further, the private security staff (presumably hired by the promoter) would bring guns, Tasers, and paintball guns according to Geer. Some in the private security detail had shot people with paintballs down the street, outside of the Cube. Geer believed that the Cube's conduct or business was "egregious."

After the Study Session in the afternoon by the Council, the Cube's license came before the Council for approval or denial that evening. The Cube's attorney stated that Aughe and Cube staff attended alcohol serving or training classes to prevent over-serving patrons. Further, the Cube would be willing to provide staff crowd control training. The promoters are responsible for their own security. The video system records over prior video captured on the system every 24 hours. Ultimately, the Cube believed that the evidence did not rise to the level of license denial for the actions, conduct, or criminality of individuals outside the Cube.

A citizen appeared via remote technology stating he lived in or near the 100-Block and, in his experience, the patrons of the Cube were disrespectful. The citizen believed the Cube's

responsibility did not end when the patrons left the Cube. In fact, he would be woken up at night by people he believed were patrons of the Cube.

One Council Member was not persuaded by the evidence. He believed that the problem was societal and not specific to the Cube.

Finally, the City Council voted on the Cube's liquor license. Council member Sandau moved to deny the Cube's liquor license. Council member Hannan seconded the motion. The motion carried by a 4-1 vote of the City Council.

On January 29, 2021, the ABD issued the Cube a "Right to Appeal" letter pursuant to Iowa Code § 123.32(6). On February 25, 2021, the Cube served its request for appeal of the City's denial of its liquor license application. The Cube contends it is entitled to a liquor license as it meets all requirements for a "person of good moral character" as required by Iowa Code § 123.3(40)(a).

It is noted that included in the record is a video, labeled February 5, 2021, that seems to show Aughe being cited for a violation of the COVID-19 protocols from one of the Governor's Emergency disaster proclamation. It also shows officers checking other establishments for compliance in the 100-Block.

This matter was heard on August 13, 2021 at the ABD. The City first presented testimony from Council member Sandau. Prior to the meeting on January 25, 2021, he had always voted to approve the liquor license for the Cube. Most of the problems with the Cube occurred late at night. The Cube had problems in the past (even when the business operated under another name). At times, the relationship would be on better footing with the City, then the relationship would eventually deteriorate. Sandau's vote to approve the Cube's liquor license in 2020, the year before the denial at issue in this proceeding, was premised on the Cube working with the City to end the problems associated in or around the Cube. Unfortunately, Sandau felt that the Cube was not collaborating or cooperating with the City – things were not working. Sandau testified to the over-capacity and over-serving issues. Further, he had been contacted by citizens and other businesses in the 100-Block. Those individuals and entities raised concerns about the nightlife in the area. Specifically, there were concerns regarding people being off the sidewalk and in the streets. Safety concerns were voiced and Sandau felt those concerns personally. Sandau believed that the Cube did not have "good moral character" because it did not cooperate with City authorities to remediate the problems. Ultimately, Sandau voted against renewing the Cube's liquor license based on the information provided by Chief Carmody and Lieutenant Geer. The police response to incidents at or around the Cube was simply too significant.

Sandau admitted he had no personal knowledge regarding the Cube's financial standing, nor did he know of any compliance problems with Iowa Code chapter 123 or ABD administrative rules. He did not personally know whether the individuals shown on video going into or exiting the Cube had been served alcohol there. He also acknowledged there were a total of nine bars in the 100-Block area and some individuals on video or in the written reports may have been served alcohol at the other establishments. Although Sandau has personally visited

the Cube, he did not conduct his own personal investigation of the alleged incidents involving the Cube. Rather, he relied primarily on the input of the police department. Nonetheless, the City had spent a great amount of time, money, and effort on the 100-Block area. No other business in that area generated complaints to the same extent as the Cube.

City Council member Hannan testified next. It should be noted that Hannan is an employee for a local casino in the City. He abstains from votes concerning his employer (it is unclear whether he abstains from votes regarding his employer's competitors). Nonetheless, Hannan's casino employer is not located in or near the 100-Block vicinity. In 2020, because he was newly-elected, it was the first time Hannan considered the Cube's liquor license. His concerns were for the safety of the residents (there are some apartments in the area) and patrons of the 100-Block. Hannan voted to approve the Cube's license in 2020 due to the Cube's strong commitment to collaborate with the City, and police, in the future. There was discussion or agreement by the Cube to use surveillance cameras, to use body cameras by Cube staff, and to increase policing. However, Hannan felt the Cube did not work with the City. Approximately only one week after approval in 2020, there was a large altercation where individuals inside or near the Cube spilled out into the public street. Hannan regretted his vote. Then the COVID-19 pandemic hit. The Cube then had a capacity citation for alleged violation of the Governor's Disaster Proclamation. Hannan felt that the Cube's action(s) compromised the City's health and welfare (for citizens and visitors). This also adversely reflected on the Cube's moral character in his opinion. Hannan felt the Cube was disrespectful to the public and residents. Like Sandau, Hannan also received complaints about the Cube from the public. On January 25, 2021, he voted to deny the Cube a liquor license. Although his vote was based on many factors, it primarily boiled down to the fact that he thought the operation of the Cube was not safe due to the number of fights associated in or near the bar. He relied on the expertise of the police for his vote.

However, Hannan conceded that the over-capacity citation was still pending and that the over-serving charge was dismissed. Further, he admitted the Cube received more scrutiny than other establishments in the 100-Block. He acknowledged that an increased police presence could be detrimental in some circumstances. He conceded that there was no evidence of any patron being served alcohol at the Cube in the cited incidents, except one. Hannan believed there was a citizen video showing patrons exiting the Cube and fighting in the public roadway. Hannan believes that good moral character means working in the interests of others as well as yourself.

Hannan agreed that there were similar incidents for other City establishments. One casino had nine separate incidents involving intoxicated patrons between July 25, 2019 and March 11, 2020. (Exhibit 10). Another establishment had seven calls for police service between September 4, 2019 and August 1, 2020. Another casino had 11 calls for service between August 17, 2019 and March 1, 2020. (Exhibit 11). Finally, a third casino had six incidents involving alcohol between January 11, 2020 and December 17, 2020. (Exhibit 12).

However, Hannan believes that the comparisons are inapt. Casinos may have 3,500 to 5,000 patrons whereas the Cube, even if overcapacity, involves only several hundred people. Casinos hire off duty police for increased surveillance, staff are trained regarding serving alcohol, conflict resolution, and crowd management. There are staff on scene at casinos from the Iowa Department of Safety, Division of Criminal Investigation. Hannan could not recall if

another bar in the 100-Block, the Black Squirrel, had a similar number of calls for service or arrests as the Cube, but he did not receive the same volume of information or complaints on that other establishment.

Ms. Melissa Head is a City Council member and was elected to the position in 2009. The Cube was brought to her attention approximately three to four years ago. There were concerns regarding the Cube's crowds, the age of the patrons, and fighting (both inside and outside of the Cube). The Council did not want to shut down the Cube because, as a business entity, it generated tax dollars in the 100-Block entertainment district. She spoke with Mr. Hoover and he worked with the police for a while, but then the situation became worse. The cooperation agreement fell apart. The Council approves about 100 liquor licenses per year. The Cube's license is the only one she has voted to deny in her tenure. Head was contacted by both citizens and businesses with concerns about the Cube. She has visited bars in the 100-Block herself and does not walk near the Cube – she will cross to the other side. Her concerns are not just about the safety of the citizens and the police, she is also concerned about property damage that has occurred as well as property valuation for the area.

Head has met with Hoover before. She described him as likeable, and he agreed to address the City's concerns. However, it did not happen. His failure to follow through reflects on his character and indicates that he is not trustworthy. Thus, she voted to deny the Cube a liquor license in 2021. Head was concerned that if the Cube was given a liquor license for the next year, things would escalate.

Head conceded that Hoover had paid for busted storefront windows in other businesses. Moreover, at night, even though it is mostly just bars, other events still occur, e.g. live music, and that people going to the 100-Block are not just Cube Patrons. Moreover, having people wait outside the Cube due to capacity limits was appropriate. In fact, the City created the large walkway to accommodate the public. On January 25, 2021, Head did not publicly speak her concerns about the Cube's liquor license at the Council meeting; she just voted to deny it. In contrast, she did vote to approve the Black Squirrel license. Head acknowledged she had no knowledge of the Cube, or Hoover, having any financial issues. Head admitted she relied, at least in part, on the overserving charge, which was dismissed, and the overcapacity citations, which are still pending.

Ms. Alice Johnson is the owner of Beauty Operation, a hairdresser salon located two business down from the Cube in the 100-Block. She had spoken to Hoover previously (before his prior business at that location, formerly called "Hounds," changed to the Cube). Johnson feels unsafe there at night. She has had employees leave work early due to security concerns. Johnson has had three windows broken in her storefront and has been informed by police and witnesses that the damage was caused by Hoover's establishment patrons. According to Johnson, another business neighbor in 100-Block has also suffered a broken window. Johnson does not believe that Hoover is a good community member. He no longer, or rarely, attends community meetings. Previously, when she spoke to Hoover about the windows, she did not like that he called her sweetheart and tried to hug her. Hoover blamed window breakage on other bars or on the structural integrity of her prior windows.

However, Johnson conceded she has not suffered any property damage since Hoover's business changed from Hounds to the Cube. Johnson pointed out that she also remodeled her storefront at a cost of \$30,000.00, apparently to prevent more window breakage. Johnson testified she has found drugs and drug paraphernalia, alcohol containers, part of a Taser, bullet shells, vomit, and blood outside her business. She had spoken to the Council about her concerns and sent them emails. Johnson had a surveillance camera mounted and pointed in the direction of the Cube. Johnson maintains that she has seen drug deals occur with individuals walking out of the Cube and turned the video over to police. It is unclear if there have been any arrests, prosecutions, or convictions based on Johnson's video submissions to law enforcement. Johnson conceded that her video does not observe individuals inside the Cube – she only sees the public area outside the Cube. Johnson has no idea if the people she sees on video have been served alcohol in the Cube. Johnson also did not submit evidence to the City Council at the meeting of January 25, 2021.

Lieutenant Geer testified. He has been in law enforcement for 26 years and is the overnight watch commander for the police department. He has been in charge of policing the 100-Block since December of 2017. He personally met with Hoover to resolve problems in the area. It started as a weekly meeting, but the frequency declined later. The discussions focused on police presence, using handheld metal detectors ("wandering" patrons), identification checks, dress codes, and the venue's promoter. Things would get better, then get worse. The videos submitted at the administrative hearing were from security cameras, body cameras, and footage obtained from a local reporter.

On January 31, 2020, there were four arrests at the Cube. On February 22, 2020, there were two arrests although some of the people in the crowd were from other establishments. On September 4, 2020, there were 22 law enforcement officers deployed (including other agencies) leaving the remainder of the City vulnerable. There was a criminal citation issued during the COVID-19 pandemic, although a Magistrate later dismissed it on vagueness grounds. There was a fire code violation issued as over 165 people were in the Cube and the maximum capacity was 152 persons. On September 26, 2020, there were a large number of people blocking the area and six were arrested. A former bartender was found to possess cocaine. Geer acknowledged the former bartender has since been terminated. Part of the problem, according to Geer, stemmed from the promoter used by the Cube. Geer also acknowledged the Cube eventually did not rehire its promoter once the contract ended in February of 2021. Further, the overserving charge was dismissed. There have been no citations for serving underage persons. Although there were drug arrests for persons allegedly coming from the Cube in traffic stops, Geer had no personal knowledge as to whether they had been served alcohol there.

Chief Carmody has been in law enforcement for approximately 38 years and been the Police Chief in Council Bluffs for approximately seven years. He recommended to the Council that the Cube's liquor license be denied in 2021. In 2014, Carmody met with the 100-Block association to address their concerns. Specifically, the association was concerned about safety and illegal behavior. Carmody wanted all businesses to succeed within the law. However, some 100-Block businesses were concerned about Hoover's establishment(s). The Cube (or its predecessor, Hounds) had 61 calls for service, the Rodeo Saloon (another Hoover business in 100-Block) had 28 calls for service. The next highest establishment had 13 calls, and the others

had about four calls.

In response, the police department assigned a lieutenant to the night shift, added compliance checks, included foot patrols and paid overtime, as well as implemented increased traffic checks. Carmody spoke with the staff at the Cube about ABD training for overserving. Generally, magnetometers, staff training for mitigating crowds, and a bigger police presence were discussed. The number of service calls then dropped. However, in 2017, the number of calls began to rise after renewal of Hoover's liquor license. There were more calls regarding fights in 2018. Carmody felt Hoover's cooperation with law enforcement would ebb and flow. During community meetings, sometimes Hoover and Aughe would attend. Previously, Carmody recommended approval for Hoover's liquor license for six years. However, due to a lack of success in having Hoover cooperate with law enforcement, he changed his recommendation to denial in 2021. For instance, the Cube had a problem adhering to the Governor's Disaster Proclamation. This reflects poorly on moral character because it disregards the rights of others according to Carmody. The pattern and practice of the Cube was to inconsistently partner with the police to curb criminality. In contrast, casinos would routinely reach out to the police department, furnish video, and help prosecute crimes. Hoover and Aughe did not.

Carmody admitted he was not personally present for any of the events seen on the video exhibits. Carmody does not have personal, direct knowledge that the criminal activity in the chronology was committed by Cube patrons. Although a tax-related criminal investigation into Hoover (or his businesses) was a consideration into Carmody's personal decision to recommend denying the Cube a liquor license, he did not divulge that information regarding an active investigation to the Council before its vote on January 25, 2021, because it was not public information.

Mr. Zach Aughe is the manager of the Cube and had been with the establishment for approximately five years. He has worked within the bar or service industry for approximately 18 years. He has attended alcohol-service training courses. He helps educate staff to check IDs and warns them about over-serving alcohol to patrons. Generally, he was responsible for scheduling events, as well as hiring and firing staff. He was at the Cube for most of the events in question and on video.

Aughe stated that often people or patrons would stand or line up outside the Cube in the public sidewalk or walkway simply due to capacity limits. Further, individuals would go outside to smoke, or were in the midst of "bar hopping" along the 100-Block. Thus, there were legitimate business and individual reasons for people to congregate outside or near the Cube unrelated to illegal activity or otherwise negative societal conduct.

On a typical night, the bar would be relatively quiet between 9:00 and 11:00 p.m. After 11:00 p.m., patronage would begin to pick up. The peak business hours were from 12:00 a.m. to 1:30 a.m. The average patron's age would range anywhere from 21 years old to late 20's. Occasionally, the Cube would have a college night promotion and a cover charge was implemented. Some under-age patrons would be permitted entry those nights and the Cube maintained alcohol control through the use of wristbands or handstamps. The Cube also hired three to five security staff to work the bar in addition to its normal staffing. The security

personnel were, generally, stationed at the front, back, and throughout the club. For Monday through Thursday business hours, the bartender typically checked identification. Otherwise, it appears security would check patron IDs on the weekend.

Aughe addressed a number of incidents in his testimony. The evening the staff member was arrested and possessed drugs, Aughe was not working and did not know the employee possessed drugs. Aughe terminated the employee.

In 2020, he was charged with overserving an individual claiming to be served by a female brunette staff member. The charge was later dismissed.

He was also charged with the two COVID-19 pandemic citations. The citations were for a violation of the applicable mask mandate and a capacity violation. He has pled not guilty and the matters are pending.

Aughe maintained that he follows the ABD rules and laws, trains the staff to do so, and Hoover encourages him to follow those rules and laws. Aughe would make police service calls when the Cube needed help, for instance, when it was sensed that patron “temperatures” were rising. On occasion, he would close the Cube or “kick out” patrons due to agitation or a “bad feeling.” Aughe does not recall turning over security video to police and acknowledged the security system would re-record over security tapes every 24 hours. There was no security camera footage for some of the incidents, i.e. over the front door area of the Cube.

Although he was working at the Cube on the night of a shooting, he did not observe the incident. He stated he was unaware of any problem until later so informed. It occurred in late February of 2021, after the City Council voted to deny the Cube’s liquor license.

On March 17, 2021, the Cube became Bier Fest. It has changed its business model from the Cube, which was more of a nightclub, to a more food-centered establishment. It does not have promotional events like the Cube held. Once the contract(s) with the troublesome promoter(s) ended, the contract(s) was (were) not renewed.

Mr. Frank Hoover is the owner of the German Beer Haus 1892 limited liability company doing business as the Cube (as well as the entities located at that address both before (Hounds) and after (Bier Fest) the Cube). Hoover has owned alcohol establishments for more than 20 years.

Hoover testified that it was typical for people to wait to enter his establishments. He runs successful businesses. None of the video evidence proved that any of the individuals causing a problem were served alcohol at the Cube.

Hoover believes and maintains that he has followed all applicable rules (and statutes). He believes that his staff follow applicable rules and statutes as well. Whenever his neighboring businesses have complained about property damage, Hoover has paid for the damage even though it was unknown whether the damage was related to the Cube’s staff or patrons. There are (or were) two security guards on Hoover’s payroll for the Cube. Although Hoover frequents his

establishments, he typically will leave between 9:00 and 10:00 p.m., before the peak hours of the Cube.

Hoover testified that he met with Chief Carmody probably five or six times and Lieutenant Geer 10 to 20 times over the years. He did not believe there was a big problem before the City Council denied his liquor license renewal. Hoover intimated or speculated that the Cube had more African-American patrons and received an unfair share of the blame for problems in the 100-Block area. He pointed out that there were relatively few problems that actually occurred inside the Cube.

At the January 25, 2021, City Council meeting, Hoover believes the Council did not have evidence that either he or the Cube violated any rules or laws. His intent was always to comply with the law. Other than the subsequent tax-related charges, Hoover has never been criminally charged.

Previously, there was a \$200,000.00 debt, or some type of financial issue, dating from a 2008 audit of his business interests. Currently, he has hired a tax attorney to handle the matter. On March 23, 2021, *after* the liquor license denial by the City Council, he was charged criminally with three counts, all related to tax issues. However, because the Minutes of Testimony have not been filed, it is unclear what exactly the specific factual bases for the charges are, but Hoover has pled not guilty and the matter is still pending. (Exhibit N).

Hoover decided to change his business model from the Cube (nightclub) to Bier Fest (food and drink) to return to his business roots. He was tired of quarreling, presumably, with neighboring businesses, the police, and the City Council. Although Bier Fest does not run many promotional events, he may try to book a band there at some point. Regarding previous Cube promotions, he had to honor his contractual obligations with troublesome promoter(s), but did not renew any contracts.

There were a number of facts adduced at trial, which are irrelevant, immaterial, or otherwise not probative of the Cube's liquor license denial by the City on January 25, 2021. First, there was a shooting in the Cube, which occurred *after* the City Council vote was taken. After the shooting, apparently sometime in February of 2021, the Cube closed down so there would be no gang retaliation. Likewise, the gunshot(s) in or around the Cube caused Ms. Johnson to lose a tenant living above her business and the rent of \$1,200.00 per month. One night Ms. Johnson testified she took a basketball team to dinner in the 100-Block after an important game, and gunshots rang out. Johnson testified the situation was difficult to explain to the children. However, it is unclear whether those gunshots had anything at all to do with the Cube and when exactly the dinner incident occurred. Again, it appears the incident occurred after the City Council vote.

Second, while the Council was considering the licensure of the Cube, there was the ongoing criminal investigation of Hoover related to tax charges. The investigation was not revealed to the Council to preserve the integrity of the investigation because it had not concluded. The criminal complaint was filed on March 23, 2021, *after* the Council's vote. (Exhibit N). That matter is still pending. Those criminal charges did not play a role in the

Council's vote.

Third, Geer admitted that Hoover changed his business model and the Cube is now Bier Fest. This German-themed establishment caters more to serving food than alcohol. There have been no incidents since the change. However, this change occurred on March 17, 2021, *after* the Council's vote.

Fourth, there was a written statement by Ms. Vivian Kvam, a former resident and business owner in the 100-Block area. (Exhibit M). Ms. Kvam asserted the Cube caused many problems over the three years she lived in the neighborhood. Included in those problems are "serious disturbances" and "mass fights" which shut down the 100-Block. Besides verbal and physical fights, Kvam alleged abusive behavior towards women, vandalism of city and private property, drug paraphernalia around the premises, display and use of weapons, drug use and lewd acts committed in the entryway of either her residence or business, and gang activity. Kvam believed that Hoover irresponsibly served alcohol to his patrons and ignored the consequences. However, Kvam did not testify, it was not a subscribed and sworn statement (i.e. not an affidavit), and she was not subject to cross-examination. Kvam's assertions and conclusions have little probative value.

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." Iowa Code § 123.1. "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 a liquor license. "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).

Rather, a person or business entity *may* be granted a liquor license under chapter 123. "A liquor control 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). *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.").

Failure to obtain a liquor license by a person prior to the sale of alcohol may result in the commission of the criminal offense of bootlegging. *See* Iowa Code § 123.59(1) ("Any person who, acting individually, or through another . . . with intent to sell or dispense the liquor, wine,

or beer, in violation of law, or who . . . solicits, takes, or accepts an order for the purchase, sale, shipment, or delivery of alcoholic liquor, wine, or beer in violation of law, or aids in the delivery and distribution of alcoholic liquor, wine, or beer . . . , or who in any manner procures for, sells, or gives alcoholic liquor, wine, or beer to a person under legal age, for any purpose except as authorized and permitted in this chapter, is a bootlegger.”).

The Cube sought renewal of a class “C” liquor license.

Liquor control licenses issued under this chapter shall be of the following classes: . . .

c. Class “C”.

(1) A class “C” liquor control license may be issued to a commercial establishment but must be issued in the name of the individuals who actually own the entire business and shall authorize the holder to purchase alcoholic liquors in original unopened containers from class “E” liquor control licensees only, wine from class “A” wine permittees or class “B” wine permittees who also hold class “E” liquor control licenses only as provided in sections 123.173 and 123.177, and to sell alcoholic beverages to patrons by the individual drink for consumption on the premises only. . . .

Iowa Code § 123.30(1)(c)(1).

With a class “C” liquor license come regulatory obligations. For instance:

As a condition for issuance of a liquor control 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 or seeking a liquor license to follow any applicable laws:

A person holding a liquor control license or retail wine or beer permit under this chapter, and the person's agents or employees, shall not do any of the following: . . .

Knowingly permit or engage in any criminal activity on the premises covered by the license or permit. . . .

Iowa Code § 123.49(2) (emphasis added); Iowa Admin. Code r. 185-4.7(1)(123).

There are a number of criminal statutes or prohibitions contained in Iowa Code chapter 123 that are or may be applicable to liquor 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 liquor control license or retail wine or beer permit under this chapter, and the person's agents or employees, shall not do any of the following: a. Knowingly permit any . . . immoral or disorderly conduct on the premises covered by the license or permit.”); Iowa Code § 123.49(2)(b) (“A person holding a liquor control license . . . shall not do any of the following . . . b. Sell or dispense any alcoholic beverage on the premises covered by the license or permit, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. . . .”); Iowa Code § 123.49(2)(c) (“A person holding a liquor control license . . . shall not do any of the following . . . c. Sell alcoholic beverages to any person on credit . . .”); Iowa Code § 123.49(2)(h) (“A person holding a liquor control license . . . shall not do any of the following . . . h. 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.”).

In addition to any applicable State regulatory or statutory requirements, in order for a person to be eligible for a liquor license, local authority approval is required. “The local authority shall either approve or disapprove the issuance of a liquor control license, a retail wine permit, or a retail beer permit, 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] division. . . .” 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] administrator.” Iowa Code § 123.32(6)(a). “An applicant for a liquor control license, wine permit, or beer permit may appeal from the local authority's disapproval of an application for a license or permit to the administrator. 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 or permit. . . .” Iowa Code § 123.32(7).

The foregoing administrative appeal process was invoked here which, in turn, resulted in the hearing. ABD referred this administrative matter for a hearing conducted pursuant to Iowa Code chapter 17A. *Id.* Before turning to the merits, a review of the applicable legal principles guiding 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).

Thus, the burden of proof is on Hoover (or the Cube) to show by a preponderance of the evidence that the City Council’s denial of approval for his liquor license was arbitrary, capricious, or unreasonable. See also 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). 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.”).

In Iowa, only individuals “of good moral character as defined by this chapter” are eligible for a liquor 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. However, the administrator shall not require the person to post a bond to meet the requirements of this paragraph. . . .

Iowa Code § 123.3(40)(a).

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 rules for licensees state:

All applicants for liquor control licenses, wine permits, or beer permits shall comply with the following requirements, where applicable, prior to receiving a liquor license, wine permit, or beer permit.

4.2(1) *Cleanliness of premises.* The interior and exterior of all 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. . . .

4.2(4) *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 liquor control license, wine or beer permit, or certificate of compliance, and the local authority or the administrator shall disapprove or deny an application for a liquor control license, wine or beer 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.

a. In evaluating an applicant's “financial standing,” the local authority or the administrator may consider the following: An applicant's “financial standing” may include, but is not limited to, verified source(s) of financial support and adequate operating capital for the applicant's proposed establishment, a record of prompt payment of local or state taxes due, a record of prompt payment to the local authority of fees or charges made by a local authority for municipal utilities or other municipal services incurred in conjunction with the proposed establishment, and a

record of prompt payment or satisfaction of administrative penalties imposed pursuant to Iowa Code chapter 123.

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: pattern or practice of sales of alcoholic beverages to 19- and 20-year-old persons for which the licensee or permittee, the licensee's or permittee's agents or employees, have pled or have been found guilty, pattern and 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, sales to intoxicated persons, licensee or permittee convictions for violations of laws relating to operating a motor vehicle while under the influence of drugs or alcohol, the recency of convictions under laws relating to operating a motor vehicle while under the influence of drugs or alcohol, licensee or permittee misdemeanor convictions, the recency of the misdemeanor convictions.

Iowa Admin. Code r. 185-4.2(1), (4)(123) (emphasis added). "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, some of the liquor license eligibility requirements are clearly met by Hoover. He has not been convicted of any felonies (or even misdemeanors) on this record. He is a citizen and resident of Iowa. There is no, or insufficient, evidence of financial difficulties. *See 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 a liquor license due to the outstanding obligations); *Talisman, Inc. v. Iowa Alcoholic Beverage Div.*, 695 N.W.2d 505 (Iowa Ct. App. 2005) ("persistent history of utility payment delinquencies alone justifies the Council's denial"). His former liquor license was not suspended or revoked at any time.

Further, some of the justifications put forth by the City Council would be an insufficient or unreasonable basis for denying Hoover a liquor license on this record. An establishment with a liquor license is not automatically responsible for the act(s) of a patron – there is no strict liability (setting aside possible dram shop liability scenarios).

Hoover also contends that the litany of events in the record's chronology do not show the Cube (or its staff) were involved with wrongdoing inside the Cube. In fact, sometimes the Cube duly reported problems to police and requested help, e.g. removing a trespasser or someone committing a disturbance.

Additionally, Hoover relies on two cases for relief. 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). Likewise, Hoover contends knowing that individuals may patronize, or even attempt to patronize, the Cube and the situation devolves into an administrative violation, or even a crime, is not substantial evidence.

But *Boger* involved a single instance on a single occasion. Here, there was a consistent pattern and practice throughout years. According to Carmody, the Cube (or its predecessor, Hounds) had 61 calls for service, the Rodeo Saloon (another Hoover business) had 28 calls for service. The next highest had 13 calls, and the others had about four calls. When a licensee owner has four to five times the number of law enforcement interactions of his next competitor, he should know something is wrong. There were community meetings and multiple law enforcement meetings with Chief Carmody and Lieutenant Geer. There were discussions of collaboration and cooperation. There was an agreement to provide video to prosecute crimes and keep the peace. None of that occurred, or occurred with regularity – the Cube's compliance or cooperation with City authorities would ebb and flow.

Second, Hoover relies on *S & A 786, LLC v. City of Des Moines Zoning Bd. of Adjustment*, 940 N.W.2d 44 (Iowa Ct. App. 2019) (Table). There, 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. People were arrested stating they purchased alcohol from the licensee. The number of law enforcement calls regarding the establishment skyrocketed. Similarly, there the local authority had created public landscaping, benches, and walkways inviting people to the area, just like the 100-Block.

But, 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 a licensee "good moral character" case. Compare Iowa Code § 123.60 (alcohol nuisance). In *S & A 786, LLC*, the licensee had no criminal citations while, here, there are two Disaster Proclamation citations pending. In *S & A 786, LLC*, the owners were "always willing to cooperate with police[,] but "not given any opportunity to do so." Here, Hoover reduced or stopped participation in community meetings. In *S & A 786, LLC*, the owners allowed police to view and copy video. Here, Hoover has not even provided security video.

If that were the end of the analysis, Hoover still may have prevailed. However, the City is correct that reputation is part of "good moral character" under Iowa Code § 123.3(40)(a) ("Person of good moral character" means . . . [t]he person has such financial standing and good reputation as will satisfy the [ABD] administrator that the person will comply with this chapter and all laws, ordinances, and regulations applicable to the person's operations under this chapter.") (emphasis added). *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.”). Moreover, the problems associated with the Cube’s operation are more than a few errors by staff. *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 liquor license suspension).

The real problem is that the Cube’s business operations and associated or proximate criminal issues were raised with Hoover in 2020 by the Council and continued into 2021 without being sufficiently redressed. The video of the Council meeting on January 25, 2021, reflects the 2020 vote to approve Hoover’s license was premised, at least in part, on Hoover’s agreement to collaborate or cooperate with the City and law enforcement. That did not happen. Council member Head felt Hoover was not trustworthy based on his assurances and lack of follow through with the City authorities. The broken trust mentioned by Council members Sandau and Hannan is part of Hoover’s reputation and moral character. For instance, Hannan believes that good moral character means working in the interests of others as well as yourself. During 2020, the operation of the Cube appears to be solely for the maximization of its profits regardless of any adverse consequences for law enforcement, the general public, and the consequences to other businesses in the 100-Block.

This is not to say that the Cube had to be operated solely for the benefit of others or even that the Cube had to solve any and all societal problems associated with serving alcohol. However, some effort to address the problems and concerns of the police, citizens, and 100-Block businesses was necessary.

The “good moral character” requirement for licensure is with regard to compliance with all statutory and ABD rules, and is not a personal assessment of the owner’s morality. 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 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.”). *See also 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.”).

Here, Hoover presented as a quiet, soft-spoken person who was not personally present during the incidents cited by police. There is no evidence that he personally caused, sanctioned, or ratified any of the problems cited by police. However, when confronted with the Cube’s problems and agreeing with the Council or law enforcement to take steps to rectify the problems, Hoover (or the Cube) did not take sufficient remedial action. That adversely affected his reputation and, by statutory definition, his good moral character. *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.”).

Ultimately, the City Council’s denial(s) of Hoover’s application for a liquor license was not arbitrary and capricious, was not an abuse of discretion, and was not unreasonable.

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 reputation 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.

The Council’s denial of a liquor license was not “taken without regard to the law or facts” regarding the Cube. The Council’s vote was not “clearly against reason and evidence.” The Cube argued that the behavioral problems cited by police were a societal problem, not a Cube problem. One Council member agreed with the Cube. However, the Council majority’s votes were not unreasonable. The liquor license denial by the City Council pursuant to Iowa Code § 123.32 is affirmed.

Finally, it should also be noted that this does not prevent Hoover from seeking a liquor license in the future. He would have to satisfy the local authority and the ABD that he meets all eligibility requirements and be approved by those entities. *See e.g.* Iowa Code § 123.30(2) (“A liquor control license shall not be issued for premises which do not constitute a safe and proper place or building and which do not conform to all applicable laws, ordinances, resolutions, and health and fire regulations.”).

ORDER

The Liquor License for German Beer Haus 1892, LLC d/b/a Cube Ultra Lounge, class “C” No. LC0036658, is hereby DENIED in this administrative matter. “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 September 10, 2021.



Forrest Guddall
Administrative Law Judge
adminhearings@dia.iowa.gov

cc:

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ABD Staff (By AEDMS): Stephen Larson, Lolani Lekkas, Josh Happe, Stephanie Strauss, Deanne Krumm, Tyler Ackerson, Brian Drewery, Scherael Thurston-Shell, Jason Hohn, Charles Crabtree

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 GERMAN BEER HAUS 1892, LLC D/B/A
CUBE ULTRA LOUNGE
Case Number: 21ABD2003
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Forrest Guddall', written in a cursive style.

Forrest Guddall, Administrative Law Judge