



Agenda Item:

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## COUNCIL COMMUNICATION City Manager's Office

### GENERAL INFORMATION

Agenda Date: 2/07/05  
054

Communication No.: 05-

Agenda No.:	Item	Type:	Resolution	Roll	Call
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Submitted by: Larry Hulse, Director, Community Development Dept.

### SUBJECT—

Application from Phui Lovan for renewal of a liquor license for Loui's Chinese & Thai Food restaurant at 1020 E. 12th Street. Please refer to letter sent to Mayor and Council Members dated 2/1/05 for additional clarification of the issues.

### SYNOPSIS—

Development Zoning was requested to approve a liquor license renewal during the fall of 2004 for the 2005-year. Neighborhood organization questioned the legal occupancy of the property for the restaurant business, believing the property was vacant for a several year period, which would result in loss of use of property for commercial use. Research by Development Zoning indicates property was vacant and restaurant use is in fact not allowed. Development Zoning had previously approved a new liquor license in 2003 as well as 2004 license renewal without the knowledge of vacancy issue.

### FISCAL IMPACT—

No significant fiscal impact anticipated.

### RECOMMENDATIONS—

The City staff recommends denial of the application for the reason that the restaurant at 1020 E. 12th Street began operating without obtaining a Certificate of Occupancy and does not comply with the applicable regulations under the Zoning Ordinance.

## **BACKGROUND—**

The staff recommendation in 2002 to approve the original liquor license for a restaurant at 1020 E. 12th Street was made in error. When the property was rezoned in 2000 to the "R1-60" Single Family, Low Density Residential District, the property was either vacant (as reported in several citizen complaints) or occupied by a catering business under the Certificate of Occupancy issued in 1992. If the property was vacant for more than one year, then any right to resume use of the building for a use not permitted in the "R1-60" District was lost. City Code §134-1352(b)(5). However, in any event, the property could not be lawfully converted for use as a restaurant.

Neither a catering business nor a restaurant are permitted uses in the "R1-60" District. City Code §134-412. Even if the catering business was an ongoing legal-nonconforming ("*grandfathered*") use, it could not be converted to a restaurant. The parking requirement for a restaurant is higher than for the catering business, and the property has no off-street parking. A non-conforming use cannot be converted to a different non-conforming use if the conversion increases the non-conformity with the applicable zoning requirements. City Code §134-1352(b)(3). In this case, the conversion from a catering business to a restaurant increased the non-conformance with the parking requirements in violation of the requirements of the Zoning Ordinance.

The applicant does not have any legal right to the continuation of an improperly granted liquor license. Iowa statutes and the Des Moines City Code do not confer any property interest in liquor license renewals. Under Iowa law there was no recognized expectation of renewal of liquor license as a property right. "A special liquor permit, liquor control license, wine permit, or beer permit is a personal privilege and is revocable for cause. It is not property . . ." Iowa Code §123.38. Since the license is not "property" there is no property interest that the government can protect under the due process clause of the constitution.

A decision by the City Council to deny renewal of the liquor license is not the final decision on the matter. Pursuant to Iowa Code §123.32, the Alcoholic Beverages Division of the Iowa Department of Commerce will make the final decision. If the applicant appeals the City's decision, the matter will be referred by the Division to an administrative law judge ("ALJ") for determination. The ALJ's decision can also be appealed, if desired, to the Division Administrator. The applicant can continue to operate under the expired license until a final decision is made by the Division. Iowa Code §17A.18(2) and IAC §185-4.26(2) .