



Roll Call Number

Agenda Item Number

5

Date April 24, 2023

Be it resolved by the City Council of the City of Des Moines, Iowa.

That the following application is hereby submitted for consideration to the Iowa Alcoholic Beverages Division of the Iowa Department of Commerce:

Nightingale Cocktail, 435 E. Grand Avenue, new Class C Liquor License. **City Manager recommends denial.**

Moved by _____ to deny.

Second by _____.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
MANDELBAUM				
SHEUMAKER				
VOSS				
WESTERGAARD				
TOTAL				

CERTIFICATE

I, Laura Baumgartner, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED

_____ Mayor

_____ City Clerk



April 19, 2023

Nightingale Cocktail, LLC (Applicant)
George Qualley
POB 41718
Des Moines, IA 50311
via email: g@nightingale.bar

DSM Investment Group, LLC (Title Holder)
POB 41718
Des Moines, IA 50311-0512
via email: g@nightingale.bar

Re: Nightingale Cocktail
435 E Grand Avenue
Des Moines, IA 50309

Dear Mr. Qualley,

Neighborhood Services Zoning Enforcement has reviewed the pending liquor license application LI12-2023-003572 filed with the Office of the City Clerk on April 4, 2023. Upon review, approval of the application will not be recommended.

Nightingale Cocktail is a bar on the property commonly known as 435 East Grand Avenue in Des Moines, Iowa. Nightingale Cocktail is owned by Nightingale Cocktail, LLC which was incorporated on March 10, 2023. Nightingale Cocktail, LLC's organizer is George Qualley IV and the registered agent is Qualley Law, PLC. Nightingale Cocktail was previously owned by Lime Lounge, LLC and was called Lime Lounge but changed names and was doing business as Nightingale Cocktails. Lime Lounge, LLC's organizer was also George Qualley IV and the registered agent was George Qualley IV. In 2011, Lime Lounge, LLC (hereinafter LL), which had been licensed and operating at another location in Des Moines, sought and obtained a Conditional Use Permit (CUP) for a business selling wine, liquor, and or beer at the new address. The Zoning Board of Adjustment (ZBOA) issued the CUP subject to several conditions. Every CUP is also subject to requirements set by ordinance including a requirement to comply with the City's noise ordinance. Municipal Code of the City of Des Moines, Iowa (Municipal Code) §134-954(c)(2).

On March 23, 2016, the ZBOA considered the Zoning Enforcement Officer's request for reconsideration of LL's CUP based on violations of the requirements in the CUP. After deliberation, the ZBOA voted to revoke LL's conditional use permit. On March 31, 2016, LL filed a petition for a writ of certiorari in Polk County District Court challenging the ZBOA's revocation of its CUP. The district court found no illegality in the Board's action and annulled the writ. On February 6, 2019, the Iowa Court of Appeals upheld the district court's decision.

LL initiated a second lawsuit that resulted in the Court of Appeals holding the City's CUP ordinance requirement to be legal. The City is currently in administrative proceedings against LL to revoke their liquor license. The proposed decision from the Administrative Law Judge is to revoke the license. The CUP requirement is an ordinance adopted to regulate the premises of liquor control licensed establishments in Des Moines as authorized by §123.39(2). It governs "other activities or matters which may affect the retail sale and consumption of alcoholic beverages and the health, welfare and morals" of Des Moines neighborhoods where those establishments are located. Iowa Code §123.30(2): "A retail alcohol 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." This statute places authority with the local municipality to determine if premises where alcoholic beverages will be served are "safe and proper." In 2016 the City through the ZBOA, determined that LL was not a safe and proper establishment because it did not conform to the sound ordinance. Nonetheless, LL continued to operate without the legally required CUP.

On September 28, 2022, LL obtained a new CUP from the ZBOA. However, this decision was contrary to the findings and recommendation of City staff. While Nightingale Cocktails has a CUP now, the ownership operated a bar without a CUP in violation of the Des Moines ordinance for 6 years, 6 months and 2 days.

To obtain a liquor license, an establishment must be of "good moral character." Des Moines City Code 10-42. A person of good moral character means a person of good reputation that will satisfy City Council that he or she will comply with ordinances applicable to operating a liquor establishment. Further, good moral character includes the requirement that an establishment has a good reputation which includes the factor that there is not a pattern and practice by the licensee or permittee, or the agents or employees of either, of violating alcoholic beverages laws and regulations for which corrective action has been taken since the previous license or permit was issued. LL's owners who are the same owners of Nightingale Cocktail have a 6-year record of operating a liquor establishment in violation of City ordinance which required the City to take corrective action by instituting proceedings with the ABD for revocation of the license.

Based on Nightingale Cocktail LLC ownership's lack of "good moral character," the application will not be recommended for approval. Such denial will be considered by the City Council at its April 24, 2023 meeting.

Respectfully,



Scott E. Sanders
City Manager

cc: Laura Baumgartner, City Clerk