OAH 65-6020-32515

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of the Liquor On Sale – Club Under 200 Members A License Application submitted by The Lex, Inc. d/b/a The Lex, for the premises located at 976 Concordia Avenue, St. Paul, MN	**RECOMMENDATION ON CROSS MOTIONS FOR SUMMARY DISPOSITION**

This matter came before Administrative Law Judge Ann C. O'Reilly upon the parties' cross Motions for Summary Disposition. Oral argument occurred on July 30, 2015. The motion record closed on August 24, 2015, upon the receipt of supplemental correspondence.

Geoffrey S. Karls, Assistant City Attorney, appeared on behalf of the city of St. Paul (City). Michael E. Obermueller, Winthrop & Weinstine, appeared on behalf of Appellant, The Lex, Inc. d/b/a The Lex (Appellant or The Lex).

STATEMENT OF THE ISSUES

1. Did the license application filed by Ladies Choice Social Club Inc., d/b/a Big Jazz Kickstand LLC, in March 2013 toll The Lex's time to submit an application for an on-sale liquor license under Saint Paul Legislative Code § 409.03(a)(1)(b) (2015)?

2. Is the City estopped from enforcing its Legislative Code and denying The Lex's application for an on-sale liquor license?

3. Is either party entitled to summary disposition on the allegation that The Lex sold intoxicating liquor for consumption without a license, in violation of Saint Paul Legislative Code § 409.01(a) (2015)?

4. Is either The Lex or the City entitled to judgment as a matter of law?

SUMMARY OF CONCLUSIONS

The Administrative Law Judge grants summary disposition in favor of the City and respectfully recommends that the City deny the on-sale liquor license of the Lex. The undisputed facts establish that The Lex is not a hotel, restaurant, or private nonprofit college; and that it is not located within the downtown business district or in a commercial development district of the City. As a result, The Lex is only eligible for an on-sale liquor license if its application was filed within two years of the termination or expiration of the

on-sale liquor license issued to the establishment previously operated at the 976 Concordia Avenue location. Because the undisputed facts establish that The Lex failed to submit the subject application for a liquor license within the two-year time period required by St. Paul Legislative Code § 409.03(a), denial of The Lex's application is warranted by operation of law. The Administrative Law Judge further concludes that the City is not estopped from enforcing its Legislative Code and denying The Lex's liquor license application.

Because the undisputed facts establish that The Lex's application was untimely under St. Paul Legislative Code § 409.03(a)(1)(b), the City has sufficient basis for denying the license application on timeliness grounds alone. It is, therefore, unnecessary to reach the question of whether The Lex unlawfully sold intoxicating liquor for consumption on February 27, 2015. Accordingly, the City's Motion for Summary Disposition is **GRANTED** and The Lex's Motion for Summary Disposition is **DENIED**.

Based upon the submissions of the parties and the hearing record,

IT IS HEREBY RECOMMENDED THAT:

1. The City Council **DENY** The Lex's Motion for Summary Disposition.

2. The City Council **GRANT** the City's Motion for Summary Disposition on the issue of timeliness of The Lex's license application.[1]

3. The City Council **DENY** The Lex's November 24, 2014 license application for a Liquor On Sale - Club Under 200 Members – "A" License.

4. The appeal to the Office of Administrative Hearings is hereby **DISMISSED.**

Dated: August 31, 2015

s/Ann C. O'Reilly

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ANN C. O'REILLY
Administrative Law Judge

[1] While the City moved for "partial" summary judgment, because the issue of timeliness of the license application is dispositive of the licensing issue as a whole, there is no need to reach the issue of whether The Lex sold intoxicating liquor on February 27, 2015. Accordingly, the City's motion is granted in whole, not in part.

NOTICE

This Report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify this Recommendation on Cross Motions for Summary Disposition. Pursuant to Saint Paul Legislative Code § 310.05 (c-1) (2015), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of Saint Paul, 310 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

Factual Background

Anicca, LLC is the owner of real property located at 976 Concordia Avenue, St. Paul, Minnesota (Property).[2] Anicca, LLC is not a party to this contested case proceeding and has not petitioned to intervene in this administrative matter.[3] The Property is located in an RT1 (residential) zoned district.[4]

From before 1995 until 2012, the building located on the Property was the site of the Attucks Brooks American Legion Hall (the Legion).[5] During the Legion's occupation of the Property, the Legion operated a "club," as defined by Minnesota law and St. Paul Legislative Code,[6] and held an on-sale liquor license permitting the sale of intoxicating beverages on the premises.[7] The Legion's last on-sale liquor license expired on July 7, 2012, due to the nonpayment of license fees.[8]

Because the Legion had vacated the Property, on September 26, 2012, the City Council took the further action to suspend the Legion's on-sale liquor license.[9] This action gave notice to the public and the Property owner that the Property did not have a licensed liquor establishment at that location.[10]

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[2] *See* recording of Oral Argument on July 30, 2015.
[3] *Id.*
[4] Affidavit of Larry Zangs (Zangs Aff.) at Ex. B.
[5] Zangs Aff. at Ex. A. Pursuant to correspondence from Assistant City Attorney Geoffrey Karls, dated August 24, 2015, the Legion held an on-sale liquor license as of August 16, 1995, thereby allowing it to continue selling alcohol in a residential district after August 16, 1995. *See* e-mail correspondence from Assistant City Attorney Geoffrey Karls to Administrative Law Judge Ann O'Reilly and Michael Obermueller, counsel for The Lex, dated August 24, 2015. The parties, therefore, stipulate that that the Legion enjoyed "grandfathered" status as a "liquor on-sale club" during its operation from at least 1995 until its license expired on July 7, 2012. *See* Zangs Aff. at Ex. A.
[6] *See* Minn. Stat. §§ 340A.101, subd. 4; .404, subd. 1(4) (2014); St. Paul Legislative Code § 409.02 (2015).
[7] Zangs Aff. at ¶ 4, Ex. A.
[8] Zangs Aff. at Ex. A.
[9] Zangs Aff. at ¶¶ 10-13.
[10] Zangs Aff. at ¶¶ 11-12.

On October 31, 2012, The Lex, then known as Ladies Choice Social Club, Inc., d/b/a Big Jazz Kickstand, entered into a lease for the Property.[11] The Lex is registered with the Minnesota Secretary of State as a nonprofit corporation operated by Charles Carter (Carter), its President.[12] Carter intended to use the facility located on the Property as a private, members-only clubhouse.[13]

On January 3, 2013, Carter met with Larry Zangs, a Project Facilitator with the City's Department of Safety and Inspections (DSI).[14] Carter inquired about the requirements for operating a club on the Property and obtaining an on-sale liquor license for that club.[15] Carter explained that he wished to use the Property as an On-Sale Liquor Club for his motorcycle club.[16]

Following the meeting, Zangs provided a Project Review Summary Report to Carter.[17] The report provided a brief summary of the various zoning, building code, and City licensing requirements for operating an "On-Sale Liquor Club" on the Property.[18] Zangs explained that because the Property is located in an RT1 residential zoned district, use of the Property as an On-Sale Liquor Club is a non-conforming use under the City's Zoning Code.[19] Therefore, to use the Property as an On-Sale Liquor Club, Carter would have to comply with the zoning regulations specific to the continuation of a legal, pre-existing, non-conforming use.[20] Zangs' Project Review Summary stated, in part:

> The proposed use is legal nonconforming in this zoning district as an On-Sale Liquor Club. I had a discussion with the Zoning Administrator about this proposal after our meeting. Since the use is nonconforming in the RT1 residential zoning district, the On-Sale Liquor Club business will need to be established within one year of the former club's ceasing operation. Additionally, the zoning code now makes a distinction between 'restaurant,' a food and drink establishment that closes before midnight; and a 'bar,' a food and drink establishment that closes after midnight. At the meeting, we talked about the implication this would have from the zoning off-street parking perspective, but based on these zoning classifications, if you were to close your establishment before midnight, you would be considered a restaurant and that would be a change of use, per the zoning code. This would mean that you would have to request a Change of Nonconforming Use Permit from the Saint Paul Planning Commission. A Public hearing would be required.

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[11] Declaration (Decl.) Charles Carter, dated July 13, 2015 (Carter Decl. #1) at 4.
[12] Decl. of Michael Obermueller at Ex. A.
[13] For purposes of the cross Motions, the City does not dispute that The Lex qualifies as a "club" under Minn. Stat. § 340A.101, subd. 7 (2014). *See* recording of Oral Argument on July 30, 2015.
[14] Carter Decl. #1 at ¶ 7; Zangs Aff. at ¶ 15.
[15] Carter Decl. #1 at ¶¶ 7-8.
[16] Zangs Aff. at ¶¶ 15-16.
[17] Zangs Aff. at Ex. B.
[18] *Id.*
[19] *Id.*
[20] *Id.*

> Based on your current proposal, as long as you are able to obtain a business license within a year of the closing of the former Attucks Brook American Legion Club and you keep the 'option' of being opened passed [sic] midnight, then you comply with **the Zoning Ordinance** and can continue the nonconforming use as a[n] On-Sale Liquor Club.[21]

The Project Summary also advised Carter that, depending on his intended use of the Property, he may also need to obtain business licenses from the City.[22] The examples of business licenses that may be required for an On-Sale Liquor Club included a Liquor On-Sale Club A (Under 200 Members) license.[23]

Zangs' letter further noted, "When applying for a business license or building permit you will need to resolve any zoning issues first before the permit or license can be issued."[24] Zangs concluded the Project Summary with the following disclaimer:

> All information provided herein summarizes the City's current understanding of the project as described by the applicant and may not be a complete list of the items necessary for the required approvals.[25]

2013 Application for On Sale Liquor License

On or about March 6, 2013, Carter filed an application for a "Liquor On-Sale Club - Under 200 Members" license for the Property.[26] The application provided that it was filed on behalf of Ladies Choice Social Club, Inc., doing business as "Big Jazz Kickstand LLC"[27] The application stated:

> Big Jazz Kickstand LLC is a privately owned lounge for Sin City Deciples[28] MC members and motorcycle club affiliates. The Sin City Deciples MC is a black American motorcycle club and was founded in Gary, Indiana in 1966.

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[21] Zangs Aff. at Ex. B (emphasis added).
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id*.
[26] Affidavit of Geoffrey Karls, dated July 22, 2015 (Karls Aff. #1) at Ex. A.
[27] *Id.* As of March 2013, Ladies Choice Social Club was a non-profit corporation registered with the Minnesota Secretary of State.
See https://mblsportal.sos.state.mn.us/Business/BusinessSearch?BusinessName=ladies%27%20choice&IncludePriorNames=True&Status=Active&Type=BeginsWith. Ladies Choice Social Club was also the holder of the registered assumed name of "Big Jazz Kickstand."
*See*https://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=fddb93b4-a99b-e211-82ac-01ec94ffe7f. However, the only limited liability company registered with the Minnesota Secretary of State at the time was Big Jazz Kickstand Lounge, LLC, not Big Jazz Kickstand, LLC.
*See*https://mblsportal.sos.state.mn.us/Business/BusinessSearch?BusinessName=big%20jazz%20kickstand&IncludePriorNames=True&Status=Inactive&Type=BeginsWithandhttps://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=3b5aed42-9964-e111-b001-001ec94ffe7f. *See also,* e-mail correspondence from Michael Obermueller, counsel for The Lex, to Administrative Law Judge Ann O'Reilly and Assistant City Attorney Geoffrey Karls, dated August 24, 2015.
[28] Sin City Deciples is the correct spelling of the group's name according to Carter and an internet search to confirm the spelling of the group's name. *See* https://en.wikipedia.org/wiki/Sin_City_Deciples.

> Sin City Deciples MC ride Harley Davidson Motorcycles only and have chapters from coast to cost [sic]. Members adopt the MC lifestyle and are bikers for life. We support ourselves and each other as members by leaving donations. We do not use illegal drugs, but we do drink alcohol. Big Jazz Kickstand LLC is members only and will hold weekly meetings and a variety of Motorcycle functions. Sin City Deciples MC has a hierarchy of command including a President, Vice President, Treasurer, Business Manager, Enforcers, Road Capitan [sic], and Members.[29]

The City concluded that Carter's March 2013 license application was deficient in a number of respects. First, the City maintained that the Sin City Deciples was an "outlaw motorcycle gang" that operated two unlicensed clubhouses at 619 St. Anthony Street and 317 Earl Street, in St. Paul.[30] Second, the City asserted that the property at 317 Earl Street was cited as a "disorderly house" prior to Carter's March 2013 application.[31] Third, the City claimed that because Sin City Deciples was a "nationally documented outlaw motorcycle gang," issuance of an on-sale liquor license would not be "in the public interest and would not meet character and suitability requirements" under Minn. Stat. § 340A.412 (2014) and St. Paul Legislative Code § 409.06 (2015). Fourth, notwithstanding the fact that the application bore the name of Ladies Choice Social Club, the business plan and other materials suggested that the application was, in fact, for the benefit of another entity, "Big Jazz Kickstand Lounge LLC."[32] (Ladies Choice Social Club was eligible to qualify for the club exemption because it had been in existence for more than three years prior to submission of the license application.[33] Big Jazz Kickstand Lounge LLC, however, was a newer entity. It was founded in late February of 2012, a little more than a year before the license application was filed.)[34]

In short, City licensing officials determined the club proposed for licensure was the Big Jazz Kickstand Lounge LLC and not the Ladies Choice Social Club.[35] Thus, on May 16, 2013, the City issued a Notice of Intent to Deny Licenses to Carter and the Ladies Choice Social Club.[36]

Carter made a timely appeal of the Notice of Intent to Deny License, and the matter was set on for a contested case hearing before the Office of Administrative Hearings.[37]

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[29] Karls Aff. #1 at Ex. A.

[30] Karls Aff. #1 at Ex. B.

[31] *Id.* St. Paul Leg. Code § 271.01 (2015) defines a "disorderly house" as "any building, dwelling, place, establishment or premises in which actions or conduct occur in violation of any law or ordinance relating to the following: (1) Sale or regulation of intoxicating liquor or nonintoxicating malt liquor; (2) Gambling; (3) prostitution, solicitation to vice, or lewd and indecent behavior; (4) Sale or use of drugs or controlled substances.".

[32] Karls Aff. #1 at Ex. B.

[33] *Id;* Minn. Stat. § 340A.404, subd. 1(a)(4) (2014) ("A city may issue an on-sale intoxicating liquor license to the following establishments located within its jurisdiction: ... clubs or congressionally chartered veterans organizations with the approval of the commissioner, provided that the organization has been in existence for at least three years …."); *accord* St. Paul Leg. Code § 409.02.

[34] Karls Aff. #1 at Ex. B.

[35] *Id.*

[36] Carter Decl. #1 at ¶ 17.

[37] *Id.* at ¶ 18.

On September 27, 2013, Carter formally withdrew his application for an on-sale liquor license and the administrative appeal was dismissed.[38]

The 2014 Application

On October 27, 2014, Carter filed an amendment to the corporate charter of Ladies Choice Social Club with the Minnesota Secretary of State's Office.[39] The amendment changed the name of the Ladies Choice Social Club to The Lex, Inc.[40]

On November 24, 2014, the City received an application from The Lex, Inc., d/b/a The Lex, through its named agent, Carter, for a Liquor On-Sale - Club Under 200 Members – "A" License.[41] The application filed was a new application, with a new license application identification number, and a new application fee was paid by The Lex.[42]

On December 18, 2014, in response to the application, Zangs sent Carter a letter stating that the City does not issue liquor licenses to clubs outside of the City's downtown and commercial districts.[43] Because the Property is not located in the City's downtown or commercial development districts, Zangs advised that to qualify for a liquor license, the establishment must operate and qualify as a "restaurant."[44] Zangs further explained that to re-classify the Property from its current, legal, nonconforming use as a "club" to a "restaurant," Carter would need to seek approval from the St. Paul Planning Commission.[45]

On January 13, 2015, Carter contacted DSI and requested that The Lex's license application be withdrawn.[46] Thereafter, on January 30, 2015, Carter reversed his request and stated that he wished to reinstate the application.[47] Although the City was in the process of refunding the application fee, the City allowed Carter to reinstate the application.[48]

On February 27, 2015, the St. Paul Police Department conducted a raid on the clubhouse located on the Property.[49] Based upon the police reports from the incident,

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[38] *Id.* at ¶ 19.
[39] Decl. of M. Obermueller, Ex. A at 1.
[40] *Id.*
[41] Zangs Aff. at ¶ 27.
[42] *Id.* at Ex. D.
[43] Carter Decl. #1 at Ex. 4.
[44] *Id.*
[45] *Id.*
[46] *See* NOTICE AND ORDER FOR PREHEARING CONFERENCE AND HEARING, OAH Docket No. 65-6020-32515 (May 12, 2015).
[47] *Id.*
[48] *Id.*
[49] *See* Affidavit of Rico Aguirre, including exhibits thereto.

the City maintains that The Lex was unlawfully selling intoxicating liquor without a license.[50] The parties dispute all other facts related to that event.[51]

On March 30, 2015, the City sent a Notice of Intent to Deny License to Carter.[52] The bases for the denial were that: (1) the Property upon which the establishment is operated is not in a downtown or commercial development district in the City; and (2) the use of the Property is not for a hotel, restaurant, or private nonprofit college, and the Property is not zoned for such uses.[53] Therefore, the City advised Carter that it was recommending that the City Council deny The Lex's application.[54]

The Lex timely requested a contested case hearing to dispute the City's intended action.[55]

Standard of Review

Summary disposition is the administrative law equivalent to summary judgment. Summary disposition is appropriate where there is no genuine issue of material fact and where the application of law to undisputed fact will resolve the controversy.[56] The Office of Administrative Hearings has generally followed the summary judgment standards developed in the district courts in considering motions for summary disposition of contested case matters.[57]

The Administrative Law Judge's function on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but solely to determine whether genuine factual disputes exist with regard to material issues.[58] The judge does not weigh the evidence on a motion for summary disposition.[59]

In deciding a motion for summary disposition, the judge must view the evidence in the light most favorable to the non-moving party.[60] All doubts and factual inferences must be resolved against the moving party.[61] If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.[62]

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[50] *Id.*
[51] *See* Carter Decl. #1 at ¶¶ 31-37; Declaration of Charles Carter dated July 24, 2015 (Carter Decl. #2) at ¶¶ 8-17; Decl. of Michelle Evans at ¶¶ 5-14.
[52] Carter Decl. #1 at Ex. 5.
[53] *Id.*
[54] *Id*.
[55] NOTICE AND ORDER FOR PREHEARING CONFERENCE AND HEARING, OAH Docket No. 65-6020-32515 (May 12, 2015).
[56] *See, Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp*., 378 N.W.2d 63, 66 (Minn. Ct. App. 1985); *Gaspord v. Washington County Planning Commission*, 252 N.W.2d 590, 590-591 (Minn. 1977); Minn. R. 1400.5500 K (2013); Minn. R. Civ. P. 56.03.
[57] *See,* Minn. R. 1400.6600 (2013).
[58] *See, e.g., DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[59] *Id.*
[60] *Ostendorf v. Kenyon*, 247 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[61] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[62] *DLH*, 566 N.W.2d at 69.

The moving party has the initial burden of showing the absence of a genuine issue concerning any material fact.[63] If the moving party is successful, the nonmoving party then has the burden of proof to show specific facts that are in dispute that can affect the outcome of the case.[64]

To successfully defeat a motion for summary disposition, the nonmoving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.[65] It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.[66] A genuine issue is one that is not sham or frivolous.[67] A material fact is a fact whose resolution will affect the result or outcome of the case.[68]

While the purpose and useful function of summary disposition is to secure a just, speedy, and inexpensive determination of an action, summary disposition cannot be used as a substitute for a hearing where any genuine issue of material fact exists.[69] Summary disposition is only proper where there is no fact issue to be decided.[70]

St. Paul City Code

The St. Paul Legislative Code (Code or City Code) expressly prohibits the sale of intoxicating liquor for consumption without a license.[71] Section 409.03(a) of the Code provides that on-sale liquor licenses may only be issued to "hotels, clubs, restaurants, and establishments" located within the downtown business district and in all commercial development districts of the City.[72] In all other areas of the City, including in areas zoned residential, "licenses shall be issued only to hotels, restaurants, and private nonprofit colleges."[73]

The Code, however, provides a "grandfather" exception for any establishment "holding licenses on August 16, 1995."[74] For such establishments, liquor licenses may be renewed so long as they are in compliance with all other requirements of law and there is no grounds for adverse actions against such licenses.[75]

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[63] *Thiele*, 425 N.W.2d at 582.
[64] *Highland Chateau, Inc. v. Minnesota Dep't of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *rev. denied* (Minn. Feb. 6, 1985).
[65] *Thiele*, 425 N.W.2d at 583; *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986).
[66] Minn. R. Civ. P. 56.05.
[67] *Highland Chateau,* 356 N.W.2d at 808.
[68] *Zappa v. Fahey*, 245 N.W.2d 258, 259-260 (Minn. 1976); *see also*, *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).
[69] *Sauter*, 70 N.W.2d at 353.
[70] *Id.*
[71] St. Paul Legislative Code § 409.01(a) (2015).
[72] St. Paul Legislative Code § 409.03(a).
[73] *Id.*
[74] *Id.*
[75] *Id.*

When the establishment operated on a grandfathered location vacates the property, a new liquor license must be applied for by the new establishment if it seeks to operate as an on-sale liquor establishment.[76] The Code states that a new liquor license may be issued for an establishment located outside of the downtown or commercial districts if there had previously been an on-sale liquor license issued for that location unless: (1) the previous license had been revoked for any reason other than nonpayment of license fees within the previous 15 years; or (2) "the previous license had terminated or expired more than two (2) years before the new license had been first applied for."[77] Thus, for a new establishment to enjoy the grandfathered status of its predecessor, the new establishment must make its application to the City within two years of the predecessor's liquor license terminating or expiring.

Legal Analysis

A. Timeliness of The Lex's Application

The Lex makes two arguments in support of its claim that the November 2014 license application was timely. First, The Lex asserts that the City Council's "suspension" of the Legion Hall's license on September 26, 2012, was not the same as a "termination" or "expiration" under Code § 409.03(a)(1)(b). Second, The Lex maintains that even if the two-year period for filing a license application runs from the end of the Legion Hall's license, the application filed by Ladies Choice Social Club Inc., d/b/a "Big Jazz Kickstand LLC" on March 14, 2013, tolled the two-year limitation for filing a new application. Neither of these claims is availing.

With respect to the Legion's on-sale liquor license, the facts and law are clear that it expired on its own terms on July 7, 2012, due to the nonpayment of licensing fees.[78] The fact the City Council also "suspended" the license after this expiration date is not significant. Because the City Code gives license holders who do not timely remit annual licensing fees (like the Legion) an opportunity to remedy the lapses and resume operations, "suspension" was a term used to describe *the Legion's* opportunity to reinstate its license. Yet, regardless of whether the Legion had an opportunity to pay late fees and resume operations, the term of the Legion's on-sale liquor license had ended. It expired on July 7, 2012, and was never renewed. Licensed liquor sales were not occurring at the Property; the Legion had vacated the Property; and the Legion had not reestablished operations at that site after July 7, 2012.[79] Therefore, there is no genuine issue of material fact that the Legion's liquor license expired on July 7, 2012.

Noting the expiration date of the Legion's liquor license, The Lex asserts that the withdrawn application of Ladies Social Club, Inc., d/b/a "Big Jazz Kickstand LLC," filed in March 2013, tolled the time for which The Lex could seek grandfathered status for purposes of the liquor licensing law. According to The Lex, as long as a new establishment "*first applies"* for a license within two years, any application filed by the new

[76] St. Paul Legislative Code §§ 409.01, .03(a).
[77] St. Paul Legislative Code § 409.03(a)(1) (emphasis added).
[78] Zangs Aff. at Ex. A.
[79] *See generally,* Zangs Aff. at ¶¶ 7-8.

establishment tolls the two-year time limitation, regardless of what occurs with that particular license application. The Lex argues that even though Ladies Choice Social Club voluntarily withdrew its 2013 application, that license application still served to toll the two-year time limitation indefinitely, until The Lex filed an entirely new application on November 24, 2014. The Lex's argument is a flawed interpretation of the plain meaning of the ordinance and leads to absurd results. Therefore, it must be summarily rejected.

While it is true that the 2013 license application of Ladies Choice Social Club was filed within two years of the expiration of the Legion's liquor license, the facts are undisputed that such application was formally withdrawn on September 27, 2013.[80] By withdrawing the application, the license application became null and void. On November 24, 2014, The Lex filed a new license application and paid a new and separate application fee.[81] That new license application – not the withdrawn application from 2013 -- is the subject of this action.

Section 409.03(a)(1) provides that "A new license may be issued for a location in such other areas of the city if there had previously been an on-sale intoxicating liquor license issued for that location, unless…[t]he previous license had terminated or expired more than two (2) years before **the new license** had been first applied for."[82] The term "the new license" indicates that the license application which tolls the two-year time limit is the application that is the subject of the license application at issue, not a previously withdrawn license application. The undisputed facts demonstrate that the Legion's liquor license expired on July 7, 2012. Thus, under the plain meaning of Section 409.03(a)(1)(b), The Lex needed to have its current application pending or approved as of July 7, 2014, in order for the Property to be eligible for a liquor license. Neither of these conditions exist for The Lex's application.

Under The Lex's interpretation of Section 409.03(a)(1), a new establishment could indefinitely toll the two-year limitation by filing "an application" within the two-year period, withdraw it, and then, anytime in the future – even well after the two years has expired – come back and make a new application, thereby extending the grandfather clause well beyond two years. Such an interpretation is inconsistent with the clear meaning of the ordinance which places a specific, two-year time limit on how long a new establishment may have to take advantage of "grandfather" status.

The question at issue in this case is whether the subject license application was filed within the two-year period prescribed by law – not whether some other application was filed within the two-year timeframe. The license application which is the subject of this licensing action was filed by The Lex on November 24, 2014. Because the subject application was not filed within two years of the expiration of the Legion's liquor license on July 7, 2012, The Lex's application was untimely. Accordingly, an application of the law to the undisputed facts warrants summary disposition in favor of the City with a recommendation to deny The Lex's application.

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[80] Zangs Aff. at ¶ 26.
[81] *Id*. at Ex. D.
[82] Emphasis added.

B. The City is Not Estopped from Enforcing the Two-Year Time Limitation Set Forth in City Code Section 409.03(a)(1)(b).

The Lex next argues that the City is estopped from enforcing its two-year time limitation because Carter received inaccurate information from Zangs upon which he relied to his detriment. According to The Lex, Carter relied upon Zangs' statement that "as long as you are able to obtain a business license within a year of the closing of the former Attucks Brook American Legion Club ... [then you] can continue the nonconforming use as a[n] On-Sale Liquor Club …."[83] The Lex maintains that this representation prevented Carter from discovering that The Lex's liquor license application needed to be filed by July 7, 2014. The Lex asserts that because of Zangs' representation, the City must be estopped from enforcing the statutory deadline. For a number of reasons, estoppel is not appropriate.

First, the facts are clear that Zangs did not assert that The Lex would be entitled to sell liquor at the Property if it simply obtained a business license within a year. To the extent that The Lex understood the project summary to make this claim, it misreads the document. What Zangs wrote is that if The Lex promptly obtained "a business license" and made similar use of the Property, then the same lack of conformity **with the zoning code** that the Legion enjoyed could continue into the future. As far as it goes, this is an accurate recitation of the City's **zoning code**.[84] Zangs was not referring to how The Lex could obtain an on-sale liquor license. Zangs was explaining how The Lex could continue the current legal nonconforming use of the Property under the zoning code. The requirements for continuing a legal nonconforming use under a zoning code are entirely different from the requirements for obtaining a liquor license.

Moreover, The Lex was not reasonable in relying on its own misunderstanding of the law and misreading of Zangs' summary. Zangs specifically noted that he might have an imperfect understanding of The Lex's project and that his summary "may not be a complete list of the items necessary for the required approvals."[85] This was likewise true. As to the requirements for an on-sale liquor license, the Zangs' summary did not include "a complete list of the items necessary for the required approvals." In fact, the summary did not give any information as to what specific requirements were necessary for The Lex to obtain a liquor license. The summary was almost entirely directed at zoning and building code requirements, not liquor licensing, because satisfying zoning requirements is a prerequisite to the issuance of either a building permit or a liquor license.[86]

The law disfavors estopping the exercise of governmental police powers.[87] It is particularly inappropriate to apply that doctrine in a case such as this – where the official's

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[83] Carter Decl. #1 at Ex. A.
[84] *See* St. Paul Leg. Code §§ 62.104 (a), (d), .106 (d), .108 (2015).
[85] Carter Decl. #1 at Ex. A.
[86] *See* Zangs Aff. at Ex. B ("When applying for a business license or building permit you will need to resolve any zoning issues first before the permit or license can be issued.").
[87] *See, e.g., Ridgewood Devel. Co. v. State*, 294 N.W.2d 288, 293 (Minn. 1980) (a party seeking to apply estoppel against the government has a heavy burden to bear and must show wrongful conduct on the part of the government); *Shetka v. Aitkin County*, 541 N.W.2d 349, 353 (Minn. Ct. App. 1995) (citations omitted),

description of the law was accurate, the official urged the regulated party not to rely upon his conclusions, and requested that the regulated party make its own assessment as to "the items necessary for the required approvals."[88] Accordingly, The Lex's assertion of estoppel must be summarily rejected.

C. Unlicensed Sales Claims are Immaterial to the Disposition of this Case

It is undisputed that on February 27, 2015, St. Paul police officers raided the Property to investigate allegations of illegal liquor sales. The City maintains that Carter and/or members of his club were selling intoxicating liquor for consumption without a license. The Lex disputes this account. The Lex acknowledges that liquor was available to club members that evening, but insists that alcohol was provided free of charge.[89]

The dispute over whether The Lex sold alcohol on February 27, 2015, is not material to the outcome of this case. A finding in favor of either the City or The Lex on this issue will not alter the conclusion regarding the untimeliness of The Lex's license application or the Property's ineligibility for liquor sales. An evidentiary hearing is not required to resolve disputes that will not affect the outcome of the case.[90]

On this record, the City is entitled to disposition as a matter of law.

D. Any Claims by Anicca, LLC Must be Rejected

It is undisputed that the owner of the Property, Anicca, LLC, is not a party to this action, was not an applicant on the subject liquor license application, and has not moved to intervene in this action. As a result, Anicca, LLC has no standing or legal authority to seek a remedy in this administrative action. Accordingly, any claims asserted by Anicca, LLC, or on behalf of Anicca, are summarily rejected.

A. C. O.

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review denied (Minn. 1996) (a party seeking to estop the government "must show the government engaged in affirmative misconduct" and tribunals "must weigh the public interest frustrated by the estoppel against the equities of the case").

[88] *Compare* Carter Decl. #1 at Ex. A at 4 with *AAA Striping Servs. Co. v. Minnesota Dep't of Transp.*, 681 N.W.2d 706, 720 (Minn. Ct. App. 2004) ("Equitable estoppel should be applied sparingly against the government and only if the wrongful conduct threatens to work a serious injustice") (citing *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980)).

[89] Carter Decl. #1 at ¶¶ 31-37; Carter Decl. #2 at ¶¶ 8-17; Declaration of Michelle Evans, at ¶¶ 5-14.

[90] *See e.g.,* DLH, Inc. v. Russ, 566 N.W.2d 60, 69 (Minn. 1997) (The inquiry is "whether there is a need for a trial - whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party") (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).