



TOWN OF JACKSON

TOWN COUNCIL

AGENDA DOCUMENTATION

PREPARATION DATE: November 7, 2016
MEETING DATE: November 21, 2016

SUBMITTING DEPARTMENT: Town Clerk
DEPARTMENT DIRECTOR: Roxanne DeVries Robinson
PREPARED BY: Sandy Birdyshaw, Town Clerk

SUBJECT: Public Hearing for a Renewal of an Annexed Retail Liquor License for:
Cutty's Bar & Grill LLC D/B/A Cutty's

STATEMENT/PURPOSE

The Town Council is the local licensing authority for the issuance, renewal, and transfer of all liquor licenses within the Town of Jackson.

It is necessary for the Mayor to **OPEN A PUBLIC HEARING** to hear protests against the issuance, renewal, or transfer of these liquor licenses. After public comment has been taken, the Mayor must **CLOSE THE PUBLIC HEARING**.

BACKGROUND/ALTERNATIVES

As part of the September 21st (Lundquist) annexation of two parcels into the corporate limits of the Town of Jackson, Cutty's Combination On/Off Premise Retail Liquor License held by Teton County was transferred to the Town. Pursuant to W.S. §12-4-602(b), the County license transferred to the Town without additional fee from the applicant. The license that transferred over to the Town expires on January 6, 2017, which is the end of the County's liquor year.

Today, we are considering an interim renewal to cover the time period between the County and Town's end of liquor year which is January 6 to March 31, 2017. This will get Cutty's on the Town's liquor year cycle.

This renewal application has been reviewed by the Wyoming Liquor Division and certified complete. It was also distributed to the Town Clerk's office, Police Department, Town Attorney, Building & Planning Department, and Fire/EMS for review. Public Notices were posted at the location premises, town website, and in the Jackson Hole News & Guide on October 19 and 26.

Additional information regarding annexed licenses:

- W.S. §12-4-602(c) states a license obtained through annexation cannot be transferred to, or renewed at a different premises within the town for six years after the annexation date.
- The number of retail liquor licenses the Town may issue is based on a population formula outlined in W.S. §12-4-201(d), which currently equates to twenty. W.S. §12-4-602(d) exempts annexed licenses from the population formula allocation, nor will it count in the next census conducted in 2020. In essence, The Town will hold one more retail license than is allotted by the population formula. According to the Wyoming Liquor Division, if the license is not renewed it would be lost until the population increases enough to warrant an additional retail license, based on the population formula.

The following is an excerpt from Wyoming Statute §12-4-104 regarding the issuance of a liquor license:

- (b) *Any license or permit authorized under this title shall not be issued, renewed or transferred until on or after the date set in the notice for hearing protests. If a renewal or transfer hearing, the hearing shall be held no later than thirty (30) days preceding the expiration date of the license or permit. A license or permit shall not be issued, renewed or transferred if the licensing authority finds from evidence presented at the hearing:*

- (i) *The welfare of the people residing in the vicinity of the proposed license or permit premises shall be adversely and seriously affected;*
- (ii) *The purpose of this title shall not be carried out by the issuance, renewal or transfer of the license or permit;*
- (iii) *The number, type and location of existing licenses or permits meet the needs of the vicinity under consideration;*
- (iv) *The desires of the residents of the county, city or town will not be met or satisfied by the issuance, renewal or transfer of the license or permit; or*
- (v) *Any other reasonable restrictions or standards which may be imposed by the licensing authority shall not be carried out by the issuance, renewal or transfer of the license or permit.*

ATTACHMENTS

Renewal Application for a Combination On/Off Premise Retail Liquor License

FISCAL IMPACT

The approval of this liquor license would result in the collection of \$375 for a prorated application fee and potentially \$1500 at the next renewal for a full year.

STAFF IMPACT

Staff impact is minimal which includes processing the application and assuring that conditions of approval have been met before issuing the license.

LEGAL REVIEW

The Wyoming Supreme Court has determined that “the law of the State of Wyoming is abundantly clear that there is no vested right in any person to have a liquor license.” (emphasis added) *Berry v. Arapahoe and Shoshone Tribes*, 420 F.Supp. 934, 941 (D. Wyo. 1976). With respect to a renewal, there is also no absolute right to expect that the license will be renewed because licensing authority “may refuse to renew in the presence of proper facts and proceedings, because the license holder’s privilege is not irrevocably vested but is only a privilege.” *City of Evanston v. Whirl Inn*, 647 P.2d 1378, 1387 (Wyo. 1982); *see Sterner v. U.S.*, 774 P.2d 639, 642 (Wyo. 1989). It should be noted, however, that under Wyoming Statutes regarding a renewal, there is a right of preference for a license at the same location. W.S. § 12-4-104(c).

For a renewal of a liquor license, an applicant may appeal an adverse decision directly to the district court. W.S. § 12-4-104(e). The appeal is treated as an entirely new trial (without a jury), in which discovery may be conducted and new evidence, not presented at the initial hearing, may be admitted and considered. The term “renewal” for the purposes of an appeal, however, has been defined as “one which contains the same terms and conditions of the old license.” *Whitesides v. Council of City of Cheyenne*, 319 P.2d 520, 523 (Wyo, 1957).

RECOMMENDATION

Should the Council be amenable to an additional restaurant liquor license, staff recommends approval of the application, subject to following conditions of approval and/or restrictions:

1. Any additional minor corrections by staff and the Wyoming Liquor Division.
2. Prior to liquor license issuance, the applicant shall have passed a dispensing room inspection conducted by the Town Clerk or Wyoming Liquor Division.

SUGGESTED MOTION

I move to approve the restaurant liquor license application made by **Cutty’s Bar & Grill LLC D/B/A Cutty’s** effective November 21, 2016 for the remaining 2016-2017 Town liquor license year which ends March 31, 2017, subject to the conditions and restrictions listed in the staff report, and further direct the Town Clerk to issue the license upon confirmation that the conditions of approval have been met.

RENEWAL OF LIQUOR LICENSE OR PERMIT APPLICATION

To be completed by the City, Town or County Clerk:

Date Filed With Clerk: 10 / 7 / 2016

	Annual Fee	Prorated Fee
Basic Fee:	\$ <u>1500.00</u>	\$ <u>375.00</u>
Add'l Dispensing Room Fee:	\$ _____	\$ _____
Transfer Fee:	\$ _____	\$ _____
Total License Fee Collected	\$ _____	\$ <u>375.00</u>
Publishing Fee Collected:	\$ <u>75.00</u>	
Publishing Direct Billed:	<input type="checkbox"/>	

Advertising Dates (2 wks): 10/19 + 10/26

Hearing Date: 11 / 7²⁵ / 2016

LICENSE TERM: 1/7/17

Through: 3/31/2017

A copy must be immediately forwarded to:
 State of Wyoming Liquor Division
 6601 Campstool Rd.
 Cheyenne WY 82002-0110

Applicant: CUTTYS BAR & GRILL LLC

Trade Name (dba): CUTTYS

Premise Address: 1140 W HWY 22
Number & Street

JACKSON, WY 83002 TETON
City State Zip County

Mailing Address: PO BOX 13011
Number & Street or P.O. Box

JACKSON, WY 83002
City State Zip

Business Telephone Number: (307) 201-1079

Fax Number: _____

E-Mail Address: jerry.fasy@gmail.com

LICENSING AUTHORITY: Begin publishing promptly. As W.S. 12-4-104(d) specifies: **NO LICENSING AUTHORITY SHALL APPROVE OR DENY THE APPLICATION UNTIL THE LIQUOR DIVISION HAS CERTIFIED THE APPLICATION IS COMPLETE.**

FILING IN	TYPE OF LICENSE OR PERMIT (CHOOSE ONLY ONE)	To Assist the Liquor Division with scheduling inspections:
<input checked="" type="checkbox"/> CITY (TOWN) OF JACKSON	<input checked="" type="checkbox"/> RETAIL LIQUOR LICENSE	WHEN DO YOU OPERATE?
FILING AS (CHOOSE ONLY ONE)	<input type="checkbox"/> ON-PREMISE ONLY (BAR)	<input type="checkbox"/> NON-OPERATIONAL/PARKED
<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> OFF-PREMISE ONLY (PACKAGE STORE)	<input checked="" type="checkbox"/> FULL TIME (e.g. Jan through Dec)
<input checked="" type="checkbox"/> LLC	<input checked="" type="checkbox"/> COMBINATION ON/OFF PREMISE (BOTH BAR & PACKAGE STORE)	<input type="checkbox"/> SEASONAL/PART-TIME
<input type="checkbox"/> PARTNERSHIP	<input type="checkbox"/> RESTAURANT LIQUOR LICENSE	(specify months of operation)
<input type="checkbox"/> LLP	<input type="checkbox"/> RESORT LIQUOR LICENSE	from <u>11:30Am</u> to <u>10:00PM</u>
<input type="checkbox"/> CORPORATION	<input type="checkbox"/> BAR AND GRILL	DAYS OF WEEK (e.g. Mon through Sat)
<input type="checkbox"/> LTD PARTNERSHIP	LIMITED RETAIL (CLUB)	<u>7 days</u>
<input type="checkbox"/> ASSOCIATION	<input type="checkbox"/> FRATERNAL CLUB	HOURS OF OPERATION (e.g. 10a - 2a)
<input type="checkbox"/> ORGANIZATION	<input type="checkbox"/> VETERANS CLUB	<u>All year</u>
	<input type="checkbox"/> SOCIAL CLUB	
	<input type="checkbox"/> GOLF CLUB	
	<input type="checkbox"/> MICROBREWERY	
	<input type="checkbox"/> WINERY	
	<input type="checkbox"/> DISTILLERY SATELLITE	
	<input type="checkbox"/> WINERY SATELLITE	
	<input type="checkbox"/> COUNTY RETAIL or SPECIAL MALT BEVERAGE PERMIT	

Minimum Purchase Requirement:

RETAIL LICENSE HOLDERS:

Have you purchased \$2,000 in spirits, wines and/or malt beverages during the previous license term? YES NO

RESTAURANT, RESORT, CLUB, COUNTY MALT, OR BAR AND GRILL LICENSE HOLDERS:

Have you purchased \$500 in spirits, wines and/or malt beverages during the previous license term? YES NO
 W.S.12-4-103(c)

1. DISPENSING ROOM DESCRIPTION WITH DIMENSIONS:

(a) Give a description with dimensions of the dispensing room and state where it is located within the building (e.g. 10 x 12 room in SE corner of building). If the building is not in existence, also provide an architect's drawing or suitable plans of the room and premises to be licensed: W.S. 12-4-102(a)(i)

34' X 59' ROOM ON SOUTH SIDE OF BLDG

(b) If **Winery** or **Microbrewery**, also list the manufacturing facility.(e.g. MFG: 10' X 12' room in SW portion of bldg.) **MFG:**

(c) Do you have an additional dispensing room? YES NO If yes, provide description and location:

(d) Provide the legal description and the zoning of the site where the applicant will conduct business:
PT SW 1/4 NE 1/4, SECTION 32, T41N, R116W, TETON COUNTY

2. Have there been any changes in the physical location of the dispensing room since the last application was filed?

YES If YES, please submit a drawing of the new dispensing room.
 NO

(a) Do you anticipate any changes in the next twelve (12) months?

YES If YES, please submit a drawing of the new dispensing room.
 NO

3. BUILDING OWNERSHIP: Does the applicant? W.S. 12-4-103 (a) (iii):

(1) **OWN** the building in which sales room is located? YES (own)

(2) **LEASE** the building in which sales room is located? YES (lease)

(A) **DATE** lease expires 11-30-2025 located on page 1 paragraph 3 of lease document.

(B) Provision for **SALE** of alcoholic or malt beverages located on page 2 paragraph 5 of lease.

NOTE: Please submit a copy of the lease with the application. W.S. 12-2-103(a)(iii) requires the lease be valid THROUGH the TERM OF THE LICENSE and MUST contain a provision for SALE OF ALCOHOLIC or MALT BEVERAGES.

4. Restaurant and Bar and Grill License Holders Only:

- (a) Gross sales figures and percentages of income derived from: W.S.12-4-408(b) (Line 1 + Line 2 must = Line 3)
(b) Did you attach a copy of your valid food service permit to this application. W.S.12-4-407(a), W.S.12-4-413(a)

(Line 1) Liquor Sales: \$ _____ (_____%)
(Line 2) Food Sales: \$ _____ (_____%)
(Line 3) Gross Sales: \$ _____ (_____%)

YES NO

5. Microbrewery License Holders Only:

- (a) Did you produce over 50 barrels (1,550 gallons) but less than 50,000 barrels (1,550,000 gallons) during the previous license term? W.S.12-1-101(a)(xix)
(b) Do you self distribute your products? W.S. 12-2-201(a) (Requires additional licensing with the Liquor Division)
(c) Do you distribute your own products through an existing malt beverage wholesaler? W.S. 12-2-201(g)(i) (Requires additional licensing with the Liquor Division)

YES NO
YES NO
YES NO

6. Social Club License Holders Only:

- (a) Have you filed a detailed statement of your activities during the year with an itemized statement of amounts expended? W.S. 12-1-101(a)(ii)(E)

YES NO

7. If the applicant is filing as an Individual or Partnership or as a Club:

Each individual or partner or officer must complete this section.

Table with 7 columns: True and Correct Name, Date of Birth, DONOT LIST PO BOXES (Residence Address No. & Street, City, State & Zip), Residence Phone Number, Have you been a DOMICILED resident for at least 1 year and not claimed residence in any other state in the last year?, Have you been Convicted of a Felony Violation?, Have you been Convicted of a Violation Relating to Alcoholic Liquor or Malt Beverages?

(If more information is required, list on a separate piece of paper and attach to this application.)

8. If the applicant is a Corporation, Limited Liability Company, Limited Liability Partnership or Limited Partnership:

Each stockholder holding, either jointly or severally, ten percent (10%) or more of the outstanding and issued capital stock of the corporation, limited liability company, limited liability partnership, or limited partnership, and every officer, and every director must complete this section.

Table with 8 columns: True and Correct Name, Date of Birth, DONOT LIST PO BOXES (Residence Address No. & Street, City, State & Zip), Residence Phone Number, No. of Years in Corp or LLC, % of Stock Held, Have you been Convicted of a Felony Violation?, Have you been Convicted of a Violation Relating to Alcoholic Liquor or Malt Beverages? (Includes handwritten entry for Gerald J Fasy)

(If more information is required, list on a separate piece of paper and attach to this application.)

OATH OR VERIFICATION

(Requires signatures by ALL Individuals, ALL Partners, ONE (1) LLC Member, or TWO (2) Corporate Officers or Directors except that if all the stock of the corporation is owned by ONE (1) individual then that individual may sign and verify the application upon his oath, or TWO (2) Club Officers.) W.S. 12-4-102(b)

Under penalty of perjury, and the possible revocation or cancellation of the license, I swear the above stated facts, are true and accurate.

STATE OF WYOMING)

SS.

COUNTY OF TETON

Before Me, SANDRA P. BIRDYSHAW, (specify)
(Printed name of Notary or other officer authorized to administer oaths)

a Notary Public, Officer authorized to administer oaths in and for TETON County, State of Wyoming, personally appeared

Gerald J. Fasy name he/she being first duly sworn

by me upon his oath, says that the facts alleged in the foregoing instrument are true.

(Seal)



- 1. [Signature]
2.
3.
4.

My Commission expires: 12-17-2017

Witness my hand and official seal:

Sandra P. Birdyshaw
(Notary Public or other officer authorized to administer oaths)

Title Notary Public / Town Clerk

Dated: 10 / 6 / 2014

FOR LIQUOR DIVISION USE ONLY
Reviewer Initials Date
Agent:
Chief:
Acct.: