

SPECIAL COUNCIL
February 25, 2021

Mayor Kling called the meeting to order at 5:30 p.m.

Clerk made note that Councilmembers Rodriguez, Bruner, Mutchie, Levi, Haverfield, Bower were present.

City Attorney Joe Borton went over the structure of the process and what we are going through. There is two alcohol committee decision appeals.

Both appellants who brought a appeal before the council had been provided written notice of the rules that I am going to describe that provides some structure to the process as follows:

At this hearing you are invited to appear with or without counsel, and you may present evidence or argument in support of the basis for your appeal. The Mayor and City Council will have already reviewed your appeal materials that were provided to our office as referenced above. You may if you would like call witnesses, although that is not required. The Mayor will preside over the hearing, and while the technical rules of evidence for a court of law will not apply, the Mayor has the discretion to set parameters on the proceedings and may exclude evidence which is irrelevant or repetitious. At this hearing the ARC representative will be provided 15 minutes to present the basis for their decision. Next, you as the appellant will be provided 15 minutes within which you may present your appeal argument. The City Council will be allowed but is not required to ask questions, but neither you nor the ARC representative will be permitted to ask questions of each other, or of any witnesses. At the conclusion of both presentations the record on appeal will be closed and submitted to the City Council for their decision. The City Council can affirm the decision of the ARC, it can overturn it, or it can modify it within the parameters of Nampa City Code and in the interest of justice. The city Council will have 60 days from the date of the hearing to approve written findings of fact and conclusions of law, which will be delivered to you. Finally, any revocation/suspension imposed on your liquor license remains on pause until delivery of these findings on you and any effective date which may be set forth therein.

❖ **(1) New Business** ❖

Item #1-1. - Mayor Kling presented the request for an **appeal** of the **Alcohol Review Committee determination** of an Alcohol license point violation by **Agave Cantina, 1516 1st Street South.**

Nampa Police Lieutenant Jamie Burns presented a staff report explaining the following incident report.

On 12-21-2020 at approximately 1:04 am, numerous Nampa Police Department officers responded to the Agave Cantina, 1516 1st Street South, in the City of Nampa, County of Canyon, for a call of a man with a firearm inside of the licensed establishment making threatening statements. Once officers arrived on scene, the suspect was located outside of establishment, still in possession of a firearm, confirmed to be a handgun. The suspect entered a vehicle as the driver and eluded officers. The suspect drove in a reckless manner reported by officers, placing other motorists in danger as he failed to stop for stop signs during the pursuit. At one point, the suspect rammed a Nampa

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Police Department patrol vehicle and eventually crashed into a power pole where he was taken into custody without further incident.

The suspect, a 20-year-old male, admitted to officers after his arrest he was served at least two alcoholic beverages while at the Agave Cantina (two beers); however, witnesses were able to confirm the suspect was in the establishment for an extended amount of time. The suspect ultimately complied with taking a breath test. The results of the breath test were over 2 ½ times over the legal limit, a .080 BrAC (Breath Alcohol Content) for an adult over the age of 21 (Title 18, Chapter 80, Idaho Code).

The suspect was arrested and charged with felony aggravated battery (Title 18, Chapter 9, Idaho Code), felony aggravated assault (Title 18, Chapter 9, Idaho Code), felony eluding (Title 49, Chapter 14, Idaho Code), excessive driving under the influence (Title 18, Chapter 80, Idaho Code), and carrying concealed weapon under the influence of an alcohol or drugs (Title 18, Chapter 33).

The Alcohol Committee met on January 27, 2021 the Alcohol Review Committee reviewed the Incident Report and has determined that there is a factual basis to believe that a Licensee or an employee or agent of a licensee committed one or more license violations which qualify for the assessment of Points against the Licensee as set forth in Nampa City Code. Those violations, as noted within the Incident Report, and the corresponding points associated with each violation as set forth in NCC 5-12-17(II)(B) are as follows:

Code Violations:

- Alcohol Regulations: Any action or conduct which violates any provision of federal, state, or local law with respect to the manufacture, sale, distribution, solicitation, or use of alcoholic beverages. 1.5 Points
- Weapons: Any action or conduct which violates any provision of Title 18, Chapter 33, Idaho Code. 3 Points
- Assault and Battery: Any action or conduct which constitutes assault or battery actions and violates any provision of Title 18, Chapter 9, Idaho Code. 3.5 Points

While there is more than violation of code noted above, NCC currently assesses points against a Licensee for the most serious of the violations for the purpose of assessing points. Within that framework, the Alcohol Review Committee has assessed 3.5 points against you as the Licensee. That point assessment falls within the “significant” category. As a result of that determination the Alcohol Review Committee has determined that the following Points Assessment Outcome is appropriate and hereby imposes the following penalty for the violation, as permitted by NCC 5-12-17(II)(E)(3)(ii):

License Determination:

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- 3.5 Points are assessed against licensee. This point assessment will remain on the Licensee record for a period of 12 months.
- The Licensee and its employees shall complete Mandatory Alcohol License Training at the direction of Jamie Burns.

Phone: 208-465-2257

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- 1 Year License Probation. During the period of Probation no further violations are to occur, and the training set forth above must be completed.
- A 72-hour suspension of your liquor license. This period of suspension shall begin at 10 am on the first Friday after your 14-day appeal period expires. (for example, the 14-day appeal period for this determination expires on February 16, 2021. That day is a Tuesday. The 48-hour suspension would therefore begin that Friday, February 12 at 10 am, and continue until 10 am Monday, February 15, 2021.)

Daniel Palomera, owner/operator Agave Cantina presented the following appeals:

I am writing this letter to appeal for alcohol points system violations, but I would like to start with an apology first. As owner of Agave Cantina, I would like to apologize to the city of Nampa Idaho, for any negativity, or unwanted situations in which we are both involved and having to go thru this process, it should not ever have to come to this. However, I assure that Agave Cantina does its best to comply with the city, and to promote local downtown business in good professional matter and strives for a good over all reputation from the community.

The code violation Agave Cantina would like to appeal is Weapons: Title 18, Chapter 33, Idaho code; There are a few reasons why we believe this code was not violated.

1. Bartender working that shift said he never saw a weapon inside of the business.
2. Witness we talked to; said he was intoxicated when his statement was told to the local authorities & could not confirm with us that a weapon was inside the premises.
3. It is not illegal to own a gun in Idaho, if they had a weapon in their vehicle, it is not of our control.

This is a learning experience for Agave Cantina. We are making sure we will be preventing situations like this. We are doing the training assigned by Jaime Burns online. All the staff, including our securities and back of house will have done online training by Monday. We are adding more security for the weekends, and we do not have anyone working alone at night anymore. We have also added a sign that helps the staff with the age of patrons, and we are also setting up a dress code.

Mayor Kling asked legal a question concerning the points violations.

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Joe Borton explained that the code is just recently being changed coming forward as originally enacted, when there are multiple violations the committee's direction was to assess the highest point violation.

In this situation the highest point violation was the 3.5 that was associated with the battery that Lt. Burns described. The weapons violation was a 3.0 violation, so it was part of the entire incident but the weapons themselves were not assessed a specific point because of the way that the code was written.

I would like to appeal the 72 hours of closure. We are still recovering from COVID-19 and then to have to close for weekend it would be hard.

Councilmembers asked questions of Lt. Burns and of appellant Daniel Palomera.

Lt Burns presented the following definitions to help with the appeals process:

Battery - is if I walk up and punch you and physically touch you and you don't want me to physically touch you.

Assault – is if I threaten you that I am going to batter you and you believe that I am going to batter, and you have a fear that I am going to do just that.

Councilmember Rodriguez explained that the appellant Daniel Palomera and family live next door.

Mayor and Councilmembers made comments.

Joe Borton explained that he that presentation have been completed, so the record is now closed. You have everything before you to make the decision you are going to make.

A couple of provisions that apply in every case that you might see that is existing in code:

1. The licensee is responsible for the conduct of all employees on the property.
2. The licensee is responsible for the failure to exercise proper control upon the property. The failure of employees or agents to exercise proper control is imputed to the licensee and the standard that you are looking for is preponderance of the evidence, that is more likely than not. It is a much lower standard than any criminal case. They truly are independent.

Your first determination is do we believe 3.5 points should be assessed. Do we think that there is a preponderance of the evident that the assault event that created those points exists? If so, your second question is?

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Do we believe that the list of sanctions that were imposed were correct, or should they be adjusted?

MOVED by Bruner and **SECONDED** by Mutchie to that Agave Cantina have a 24 hour closure instead of the 72 hour closure and probation for one year as presented leaving the 3.5 points in effect with the closure to begin the first Friday (10:00 a.m. Friday until 10:a.m. Saturday) following the adoption and approval of the Findings of Facts and Conclusions of Law. The Mayor asked for a roll call vote with all Councilmembers present voting **YES**. The Mayor declared the

MOTION CARRIED

Item #1-2. - Mayor Kling presented the request to **appeal** of **Alcohol Review Committee** Determination of an Alcoholic License Point violation by **4T Sports Bar, 112 13th Avenue South**.

Nampa Police Lieutenant Jamie Burns presented a staff report explaining the following incident report.

On 12-20-2020 at approximately 1:21am, officers were dispatched to the 4T Bar, 112 13th Ave South, in the City of Nampa, County of Canyon, for a call of a large fight involving approximately 30 people outside of the establishment, as well as a subject with a firearm.

Once officers were able to take control of the scene, it was determined an intoxicated male had battered two of the 4T Bar security employees. One of the security employees was the subject later identified as having his firearm out during the large fight. It was also determined another physical fight occurred at the same time, inside of the establishment, between two females.

The intoxicated male suspect was arrested and charged with two counts of battery (Title 18, Chapter 9, Idaho Code).

Code Violations

- Alcohol Regulations: Any action or conduct which violates any provision of federal, state, or local law with respect to the manufacture, sale, distribution, solicitation, or use of alcoholic beverages. 1.5 Points
- Assault and Battery: Any action or conduct which constitutes assault or battery actions and violates any provision of Title 18, Chapter 9, Idaho Code. 3.5 Points

While there is more than violation of code noted above, NCC currently assesses points against a Licensee for the most serious of the violations for the purpose of assessing points. Within that framework, the Alcohol Review Committee has assessed 3.5 points against you as the Licensee. That point assessment falls within the “significant” category. As a result of that determination the Alcohol Review Committee has determined that the following Points Assessment Outcome is

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appropriate and hereby imposes the following penalty for the violation, as permitted by NCC 5-12-17(II)(E)(3)(ii):

License Determination:

- 3.5 Points are assessed against licensee. This point assessment will remain on the Licensee record for a period of 12 months.
- The Licensee and its employees shall complete Mandatory Alcohol License Training at the direction of Jamie Burns.

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Email.: burns@cityofnampa.us

- 1 Year License Probation. During the period of Probation no further violations are to occur, and the training set forth above must be completed.
- A 72-hour suspension of your liquor license. This period of suspension shall begin at 10 am on the first Friday after your 14-day appeal period expires. (for example, the 14-day appeal period for this determination expires on February 16, 2021. That day is a Tuesday. The 48-hour suspension would therefore begin that Friday, February 12 at 10 am, and continue until 10 am Monday, February 15, 2021.)

Councilmembers asked questions of Lt Burns.

Rosa Meza owner of the 4T Sports Bar presented the following Appeal and two videos were played:

This written notice serves as an appeal to the Alcohol Point System Violation suspension levied against 4T Sports Bar in a letter from the city of Nampa dated January 29, 2021.

This appeal is based on the following:

Specific new factual evidence that was not included within the Incident Report.

The first paragraph of the letter from the city titled Re: Alcohol Points System Violation reads as follows:

"Enclosed you will find a copy of an Incident Report wherein the facts and circumstances that led to the determination of a Code violation"

Code Violations:

- Alcohol Regulations: Any action or conduct which violates any provision of federal, state, or local law with respect to the manufacture, sale, distribution, solicitation, or use of alcoholic beverages. 1.5 Points
- Assault and Battery: Any action with conduct which institutes assault or battery actions and violates any provision of Title 18, Chapter 9, Idaho Code. 3.5 points

Thus, the Incident Report is the only basis for which an alcohol violation was levied and are defined under the title "Code Violations".

The Incident report fails to establish three key items:

1. Alcohol was served by 4T Sports Bar to anyone who was involved in the incident of December 20, 2020
2. The incident occurred in an area "under control of the licensee".
3. The Code Violations are tied to specific incident report details.

A breakdown of the Incident report and my response is as follows:

Once officers were able to take control of the scene, it was determined an intoxicated male had battered two of the 4T Bar security employees.

This does not establish the intoxicated male was served alcohol at 4 T Sports Bar.

This does not establish the location of the incident was under control of the licensee.

This does establish that 4 T bar employees were victims to this incident.

One of the security employees was the subject later identified as having his firearm out during the fight.

This does not fall within either of the Code Violations defined in the violation letter.

This is incorrect. The employee had a self-defense taser in his hand.

It was also determined another physical fight occurred at the same time, inside of the establishment, between two females.

This is incorrect. There was an incident between two females but this took place on city property and not inside 4 T Sports Bar.

Furthermore, it does not establish whether either party was served alcohol by 4 T Sports Bar.

The intoxicated male suspect was arrested and charged with two counts of battery (Title 18, Chapter 9, Idaho Code)

This does not establish the male suspect was served alcohol by 4 T Sports Bar or was even allowed entry.

This does not determine the location of where the battery occurred.

See:

Ordinance 4503

B. License Violations

A License violation can occur on the licensed premises, in the parking lot for the premises, or in an adjacent area under the control of the licensee.

4T Sports Bar Narrative:

On December 20, 2020 an intoxicated male, later identified as Travis Lafée, attempted to enter 4T Sports Bar and was stopped at the front door by staff for being visibly intoxicated. Mr Lafée

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asserted he was law enforcement, demanded entry and stated had the authority to shut the place down.

Once denied entry, Mr. Lafee became verbally abusive to staff and bystanders who had gathered outside. A bystander struck Mr. Lafee who recovered his balance and then tackled the security guard, Michael, who was standing nearby. A brief scuffle involving 4 persons ensued on city property.

Conclusion:

There is no mention in the Incident Report of Mr. Lafee being served alcohol by 4T Sports Bar and I assert 4 T Sports Bar is not in violation of "Any action or conduct which violates any provision of federal, state, or local law with respect to the manufacture, sale, distribution, solicitation, or use of alcoholic beverages.

I submit video evidence which refutes the Incident Report on the following items:

- "A large fight involving 30 people outside of the establishment. .. "
- That there was a firearm out during the "large fight"
- That any incident took place on the licensed premises, in the parking lot for the premises, or in an adjacent area under the control of the licensee.
- That another physical fight occurred at the same time, inside of the establishment, between two females.

Since the Alcohol Violation levied against 4 T Sports Bar utilized the incident report as the basis for the violation, and the Incident Report conflicts with the video evidence, it then fails to meet the necessary criteria to levy an Alcohol Violation. Therefore, I respectfully request the Alcohol Violation and subsequent 1-year probation period be withdrawn by the City of Nampa.

Councilmembers asked questions of the appellant.

The videos were shown to the councilmembers.

Councilmembers made comments.

MOVED by Bruner and **SECONDED** by Bower to **affirm the Alcohol Review Committee decision of the assessment of the 3.5 points, the one-year probation but change the 72-hour closure to no closure.** The Mayor asked for a roll call vote with Councilmembers Haverfield, Bower, Bruner voting **YES**. Councilmembers Rodriguez, Mutchie, Levi voting **NO** the Mayor voted **NO** to break the tie. The Mayor declared the

MOTION DENIED

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MOVED by Mutchie and **SECONDED** by Rodriguez to **assess only 1 point, have no closure and cut the 1-year probation down to 90 days.** The Mayor asked for a roll call vote with all Councilmembers present voting **YES.** The Mayor declared the
MOTION CARRIED

MOVED by Mutchie and **SECONDED** by Rodriguez to **adjourn the meeting** at 7:10 p.m. The Mayor declared the
MOTION CARRIED

Passed this 15th day of March 2021.

MAYOR

ATTEST:

NAMPA CITY CLERK