

Item #12c

**City of Carson City
Agenda Report**

Date Submitted: July 7, 2009

Agenda Date Requested: July 16, 2009
Time Requested: 20 minutes

To: Liquor Board

From: Business License, Public Works

Subject Title: Discussion on the proposed modifications relating to the disciplinary action procedure and penalties for liquor license violations and possible direction to staff to bring forth amendments to the municipal code (Jennifer Pruitt/Lena Tripp)

Staff Summary: Staff is proposing to modify the liquor license ordinance and is asking the Liquor Board to provide input on the modifications prior to the Board of Supervisors amending the municipal code

Type of Action Requested:

☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to direct staff to bring forth the following proposed amendments to the municipal code:

Explanation for Recommended Board Action: N/A

Applicable Statute, Code, Policy, Rule or Regulation: CCMC 4.13

Fiscal Impact: N/A

Explanation of Impact: N/A

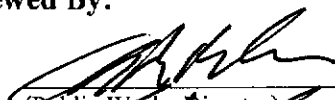
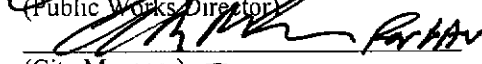
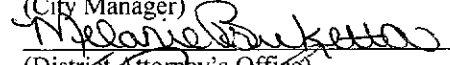
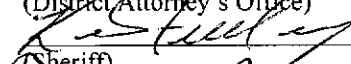
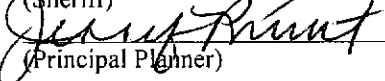
Funding Source: N/A

Alternatives: 1)
2)

Supporting Material: 1) Memo dated July 16, 2009
2) Supporting documentation

Prepared By: Lena Tripp, Senior Permit Technician

Reviewed By:


(Public Works Director)

(City Manager)

(District Attorney's Office)

(Sheriff)

(Principal Planner)

Date: 7-7-09
Date: 7-7-09
Date: 7-7-09
Date: 7-7-09
Date: 7-8-09

Board Action Taken:

Motion: _____

1) _____ Aye/Nay
2) _____

(Vote Recorded By)

MEMORANDUM

Board of Supervisors Meeting of July 16, 2009

TO: Mayor and Supervisors

FROM: Lena Tripp, Senior Permit Technician
Jennifer Pruitt, Principal Planner

DATE: July 16, 2009

SUBJECT: Carson City Municipal Code (CCMC), Chapter 4.13.150 Disciplinary action procedure and penalties.

The purpose of this staff memo is to discuss potential modifications and to give a brief overview of the rationale for the recommended options provided by staff, as they are related to the disciplinary action procedure and penalties of the Liquor License ordinance. City staff has met on several occasions to discuss the CCMC update regarding the Liquor Board and Liquor Licensing and Sales ordinance. After a great deal of consideration, it was determined by Staff to request direction from the Board regarding the disciplinary procedure and penalties.

The Carson City Liquor Board has expressed some concerns regarding the CCMC, Chapter 4.13.150 Disciplinary action procedure and penalties over the past few months. Staff will incorporate the option(s) identified in the discussion by the Board into the Liquor Board and Liquor Licensing and Sales ordinance update, currently being prepared by staff.

The current CCMC, Chapter 4.13.150(8) Penalties that may be imposed upon a licensee by the Board for criminal citations issued within any six month period that are related to the sale of liquor at the licensed premises are as follows:

- a. First offense, if the person violating the criminal statute is issued a citation by the Sheriff's Department, the Sheriff's Department shall notify the Development Services Department of the name of the person to whom a citation was issued and the location, date and time of the offense. The holder of the liquor license for the location at which the criminal citation was issued will be issued an administrative citation in the amount of \$100.00 and will be notified within three business days by registered mail, sent by the Development Services Department, or personal service of the date and time of the occurrence and the name of the person to whom a citation was issued for violating a criminal statute.

- b. Second offense, if the person violating the criminal statute is issued a citation by the Sheriff's Department, the Sheriff's Department shall notify the Development Services Department of the name of the person to whom a citation was issued and the location, date and time of the offense. The holder of the liquor license will be notified within three business days by registered mail, sent by the Development Services Department, or personal service of the name of the person to whom a citation was issued and the location, date and time of the occurrence. The holder of the liquor license shall also be notified within three business days by registered mail or by personal service, that they must attend the next regularly scheduled Carson City Liquor Board meeting. The Carson City Liquor board may issue a fine of up to \$500.00 for a second offense to the holder of the liquor license and require mandatory alcohol server training within three months of the hearing.
- c. Third offense, if the person violating the criminal statute is issued a citation by the Sheriff's Department, the Sheriff's Department shall notify the Development Services Department of the name of the person to whom a citation was issued and the location, date and time of the offense. The holder of the liquor license will be notified within three business days by registered mail, sent by the Development Services Department, or personal service of the name of the person to whom a citation was issued and the location, date and time of the occurrence. The holder of the liquor license shall also be notified within three business days by registered mail or personal service that they must attend the next regularly scheduled Carson City Liquor Board meeting. The Carson City Liquor Board may issue a fine of \$1,500.00 for a third offense to the holder of the liquor license and also may suspend or revoke the liquor license.
- d. Emergency suspension, if the person violating the criminal statute has been issued four or more criminal citations within any six month period related to the sale of liquor at the licensed premises, the Sheriff, his designee, or the Board may suspend the liquor license of the license holder until the next meeting of the Carson City Liquor Board pursuant to the provisions of Section 4.13.160.

Below are the options identified by Staff as alternative to the Liquor License Disciplinary Action, which may be considered by the Board at a later date, through the CCMC ordinance update process.

Option 1:

- All disciplinary actions would remain as noted above.

City staff is aware that the existing disciplinary action procedure and penalties as noted above is working. The Sheriff's Office has seen a decrease in the amount of businesses failing alcohol checks. It has also been noted as businesses have been required to appear before the Board regarding disciplinary action, there have been an

improved awareness of the responsibility to the customers of establishments and the community of Carson City to prevent minors from purchasing or being served alcohol.

These efforts of increased awareness and responsibility have resulted in the following:

- Newly created new business policies regarding alcohol service and sales;
- A sense of urgency to educate employees that sell or serve alcohol;
- Independent alcohol training programs;
- Zero tolerance of offenses related to service or sales to minors;
- The purchase and use of IDvisors, which alert employees to an underage identification.

Option 2:

- First offense disciplinary action would stay the same as noted above.
- Second offense, if the person violating the criminal statute is issued a citation by the Sheriff's Department, the Sheriff's Department shall notify the Development Services Department of the name of the person to whom a citation was issued and the location, date and time of the offense. The holder of the liquor license for the location at which the criminal citation was issued will be issued an administrative citation in the amount of \$500.00 and will be notified within three business days by registered mail, sent by the Development Services Department, or personal service of the date and time of the occurrence and the name of the person to whom a citation was issued for violating a criminal statute. Completion of mandatory alcohol server training within three months of the citation is required of all employees serving and/or selling alcohol.
- Third offense, if the person violating the criminal statute is issued a citation by the Sheriff's Department, the Sheriff's Department shall notify the Development Services Department of the name of the person to whom a citation was issued and the location, date and time of the offense. The holder of the liquor license for the location at which the criminal citation was issued will be issued an administrative citation in the amount of \$1,500.00 and will be notified within three business days by registered mail, sent by the Development Services Department, or personal service of the date and time of the occurrence and the name of the person to whom a citation was issued for violating a criminal statute. Completion of mandatory alcohol server training within three months of the citation is required of all employees serving and/or selling alcohol.
- Emergency suspension would stay the same as noted on page 2.
- The Carson City Liquor Board would continue to address appeals.

A concern expressed by staff is that with Option 2 above the Board role and visibility in the process will be reduced. Currently the Board's role and participation in the

disciplinary process has been very visible and an incentive to integrate **proactive** policies by the Liquor Managers, to reduce the possibility of suspension and or revocation of the Liquor License.

A positive aspect of option 2 is that the offenses would be handled administratively by City staff and would only be subject to Board action upon appeal of the disciplinary action.

Option 3:

- First offense disciplinary action would stay the same. Second Offenses, Third Offenses and appeals would be addressed through a Hearings Examiner process.

A hearing Examiner would review and interpret regulations, conducts hearings, make decisions, and hear appeals on administrative citations.

- First offense disciplinary action would stay the same as noted above.
- Second offense, if the person violating the criminal statute is issued a citation by the Sheriff's Department, the Sheriff's Department shall notify the Development Services Department of the name of the person to whom a citation was issued and the location, date and time of the offense. The holder of the liquor license will be notified within three business days by registered mail, sent by the Development Services Department, or personal service of the name of the person to whom a citation was issued and the location, date and time of the occurrence. The holder of the liquor license shall also be notified within three business days by registered mail or by personal service, that they must attend a hearing conducted by a Hearing Examiner. The Hearing Examiner may issue a fine of up to \$500.00 for a second offense to the holder of the liquor license and require mandatory alcohol server training within three months of the hearing.
- Third offense, if the person violating the criminal statute is issued a citation by the Sheriff's Department, the Sheriff's Department shall notify the Development Services Department of the name of the person to whom a citation was issued and the location, date and time of the offense. The holder of the liquor license will be notified within three business days by registered mail, sent by the Development Services Department, or personal service of the name of the person to whom a citation was issued and the location, date and time of the occurrence. The holder of the liquor license shall also be notified within three business days by registered mail or personal service that they must attend a hearing conducted by a Hearing Examiner. The Hearing Examiner may issue a fine of \$1,500.00 for a third offense to the holder of the liquor license and also may suspend or revoke the liquor license.
- Emergency suspension would stay the same as noted on page 2.

- The Carson City Liquor Board would address appeals of the decisions from the Hearing Examiner.

The Hearing Examiner process would include:

- Appearance of fairness by the decision maker;
- Proper notice of the hearing;
- A proper hearing process;
- A complete record;
- A discussion or recommendation based on the record that meets legal requirements pursuant the CCMC.

A concern expressed by staff is the possibility of inconsistency that could result in the Hearing Examiner process.

An additional concern is the addition of another layer (red tape) of regulation imposed by ordinance, which will ultimately be submitted to the Carson City Liquor Board for appeals, thus rendering the Hearing Examiner process ineffective.

A positive aspect of the Hearing Examiner process is that the offenses would be handled administratively and would only be subject to Board action upon appeal of disciplinary action by the Hearing Examiner.

Based upon the discussion and direction of the Board regarding the disciplinary action procedure and penalties, staff will incorporate the recommendations into an ordinance that will be made available for all Liquor Licensees to participate in the process and then forwarded to the Board in August of 2009.

Please contact Lena Tripp, Senior Permit Technician 887-2310 ext. 30059, or Jennifer Pruitt 887-2180 ext. 30076, Principal Planner, with additional questions.

Attachments:

- 1) Disciplinary action and penalties of surrounding counties and cities.
- 2) Liquor Board action within the past 12 months.
- 3) Nevada Appeal article regarding recent citations.

2009	BUSINESS LICENSES		LIQUOR LICENSES		GAMING LICENSES		SPECIAL EVENTS	ADMINISTRATIVE CITATIONS			
MONTH	N	R	N	R	N	R	E	L	1	2	3
JANUARY	84	3407	0	48	1	32	1	4	1	2	0
FEBRUARY	108	534	0	2	0	0	1	2	3	2	1
MARCH	115	151	3	103	1	59	13	4	3	0	0
APRIL	91	94	2	19	1	8	11	3	2	1	0
MAY	80	50	0	2	0	0	9	3	2	0	0
JUNE	98	37	2	69	1	26	13	18	0	0	0
6 MONTH	576	4273	7	243	4	125	48	34	11	5	1
JULY											
AUGUST											
SEPTEMBER											
OCTOBER											
NOVEMBER											
DECEMBER											
12 MONTH	576	4273	7	243	4	125	48	34	11	5	1

N= New License R = Renewed Licenses E = Event L = Temporary Liquor

**CARSON CITY BUSINESS LICENSE
LICENSES AND PERMITS (2005-2008)**

2008	BUSINESS LICENSES		LIQUOR LICENSES		GAMING LICENSES		SPECIAL EVENTS	ADMIN CITATIONS		
MONTH	N	R	N	R	N	R	P	1	2	3
JAN	50	2620	1	21	0	2	5	N/A	N/A	N/A
FEB	92	353	0	0	0	0	10	N/A	N/A	N/A
MAR	106	173	0	1	0	0	11	N/A	N/A	N/A
APR	109	85	0	0	0	0	13	N/A	N/A	N/A
MAY	92	50	1	1	0	0	26	N/A	N/A	N/A
JUNE	79	37	6	23	0	10	28	N/A	N/A	N/A
6 MONTH	528	3318	8	46	0	12	93	0	0	0
JULY	102	42	2	26	2	39	8	5	0	0
AUG	99	16	2	0	0	0	20	3	0	0
SEPT	74	14	14	67	0	42	18	1	0	0
OCT	83	193	2	16	3	19	31	1	0	0
NOV	71	62	1	8	0	0	8	11	1	0
DEC	64	2088	0	41	1	16	1	3	1	1
12 MONTH	1021	5733	29	204	6	128	179	24	2	1

2007	BUSINESS LICENSES		LIQUOR LICENSES		GAMING LICENSES		SPECIAL EVENTS
MONTH	N	R	N	R	N	R	P
JAN	70	2127	0	14	1	0	3
FEB	76	28	0	1	0	0	9
MAR	83	16	0	0	0	0	4
APR	57	8	0	0	0	0	11
MAY	59	7	0	0	0	0	13
JUNE	72	4	0	10	0	1	9
6 MONTH	417	2190	0	25	1	1	49
JULY	74	8	1	0	0	0	15
AUG	78	3	1	0	0	0	12
SEPT	65	5	9	46	2	16	14
OCT	95	3	4	22	1	52	22
NOV	95	9	4	3	0	3	4
DEC	111	3015	2	43	1	5	1
12 MONTH	935	5233	21	139	5	77	117

2006	BUSINESS LICENSES		LIQUOR LICENSES		GAMING LICENSES		SPECIAL EVENTS
MONTH	N	R	N	R	N	R	P
JAN	62	2267	1	22	0	7	7
FEB	76	280	1	2	0	0	7
MAR	68	95	1	1	0	0	7
APR	89	47	4	3	0	0	4
MAY	86	34	0	2	0	0	17
JUNE	74	33	2	6	1	2	11
6 MONTH	455	2756	9	36	1	9	53
JULY	54	38	1	0	0	0	9
AUG	126	28	7	1	0	0	13
SEPT	81	21	2	10	0	10	12
OCT	85	19	4	7	0	13	6
NOV	100	45	2	0	0	0	9
DEC	80	2989	0	27	0	0	4
12 MONTH	981	5896	25	81	1	32	106

2005	BUSINESS LICENSES		LIQUOR LICENSES		GAMING LICENSES		SPECIAL EVENTS
MONTH	N	R	N	R	N	R	P
JAN	53	2270	1	17	1	6	
FEB	60	244	2	3	0	0	
MAR	65	160	2	4	0	0	
APR	80	46	2	2	0	3	
MAY	84	40	2	2	0	0	
JUNE	92	34	1	19	0	15	
6 MONTH	434	2794	10	47	1	24	
JULY	89	31	2	3	2	6	
AUG	87	40	2	0	0	0	
SEPT	87	25	3	33	1	50	
OCT	95	28	1	1	1	0	
NOV	91	65	2	0	0	2	
DEC	85	2822	0	69	0	47	
12 MONTH	968	5805	20	153	5	129	

SHERIFFS' LOG

Carson City

The following people were booked into the Carson City Jail. All suspects are innocent until proved guilty in court:

- Tony Cervantes, 49, of Carson City, was arrested at 6:17 p.m. Wednesday in the 2200 block of Highway 50 East on suspicion of felony possession of a prescription drug without a prescription, two misdemeanor warrants for failure to appear on a traffic warrant, contempt of court, driving on a suspended license and failure to obey a traffic device. Bail was set at \$11,751.
- Report of a possibly intoxicated man outside Fernley City Hall threatening workers at 5:40 p.m.

Lyon County

The following are some of the calls to which deputies responded Wednesday:

- Felony arrest on Dayton Valley Road at 5:42 a.m.
- Misdemeanor drunken driving arrest and Colorado warrant arrest of a 25-year-old woman at 4:05 p.m. on Esmeralda Avenue in Silver Springs.

The following are some of the calls to which deputies responded Wednesday:

- A set of golf clubs was reported stolen from the parking lot at the Silver Oak Golf Course sometime overnight.
- Two windows were broken on a home on Hells Bells Road within the past week.
- Accident at North Roop and Long streets at 2:45 p.m.
- A caller reported his

home on Ash Canyon Road was burglarized about 2:30 p.m. and she believed she scared off the burglars when she arrived home.

- Accident at Pine Lane and Hot Springs Road at 7:48 p.m.

Carson City Secret Witness will pay up to \$2,500 for information leading to the arrest and conviction of individuals committing crimes. If you have any information call 775-322-4900. The School Secret Witness number is 775-283-1799. Callers always remain anonymous.

Everyone passes alcohol checks

BY F.T. NORTON

fnorton@nevadacappeal.com

For the first time in six years, not one Carson City business checked for alcohol compliance sold alcohol to an underage decoy.

"The Sheriff's Office has seen a decrease in the amount of businesses failing during the past year," said Sgt. Brian Humphrey. "The largest number of businesses failing came

on Nov. 14, 2008, when 12 out of 21 businesses failed during an alcohol compliance check.

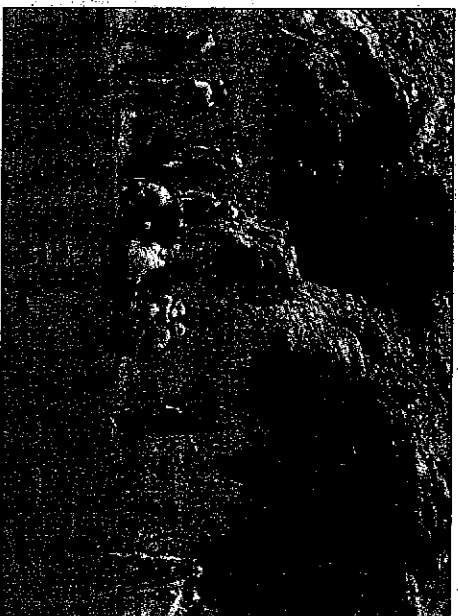
"Since (then) there have always been between two to six businesses failing."

On May 30, every one of the 27 businesses checked passed the test.

Since its inception in July 2003, the department has conducted more than 1,000 compliance checks and issued \$626 fines to many servers.

The following business successfully passed Saturday's compliance checks: Terribles, 1615 E. Fifth St.; Eagle Valley Market, 933 Woodside Drive; Rand Convenience Store, 1464 Rand Ave.; San Marcos Grill, 260 E. Winnie Lane; El Torito, 308 E. Winnie Lane; Quick Stop, 3006 N. Roop St.; Wal-Mart, 3400 Market St.; Shell Gas Station, 1462 S. Carson St.; AM PM Mini Mart, 720 S. Carson St.

On Highway 50 East/East William: AM PM Mini Mart, Video Centro, Gold Dust West Casino, 7-Eleven, Country Store, Sak and Save, Smiths, Playa Azul. On North Carson Street: AM PM Mini Mart, Capital City Liquor, Short Stop Market, Smoke Shop, Las Palmitas Mexican Food, Eagle Valley Market, Eagle Gas and Save, Nugget Casino and Horseshoe Club Casino.



SCOTT NEUFFER/NEVADA APPEAL NEWS SERVICE

Emergency personnel prepare to transport a 17-year-old who went over the edge of the old power dam on Thursday.

Friends save teen from drowning

BY SCOTT NEUFFER
Nevada Appeal News Service

Douglas County Sheriff Capt. Mike Biagini is calling them heroes — the half-dozen teenagers that pulled one of their peers out of the freezing Carson River on Thursday and then administered CPR on the water's edge.

"There were about seven kids who pulled him out and started CPR, then called for help," Biagini said. "They did a good job."

The 17-year-old Douglas High School student, whose name is being withheld, allegedly went over the edge of the broken power dam, south of Rubenstroph, while swimming with friends in the area.

"Every year, a lot of kids go down there to enjoy the water

back up to the surface about 50 yards downstream." Biagini said the young man was unconscious when friends started CPR. They continued for several minutes until authorities arrived on the scene, including the sheriff's office, East Fork Fire & Paramedic Districts, and the Washoe Tribal Police.

About a dozen rescue personnel navigated the steep, rocky slopes down to the banks of the East Fork.

The same workers loaded the young man on a stretcher. Instead of traversing the canyon wall, they carried the victim over several hundred yards of uneven ground.

Waiting on the bridge downstream of the dam was a Care Flight helicopter, which later transported the victim to Renown Regional

OBITUARIES

Bob Samon

April 2, 1936 - June 1, 2009

Bob was born April 2, 1936 in Berkeley, Calif. and passed away June 1, 2009 in Reno after a hard-fought battle against cancer. He attended schools in the Walnut Creek area and after graduation from high school attended the University

Shirley Martel

July 25, 1945 - June 2, 2009

Shirley Martel, 63, died unexpectedly in her home June 2, 2009. Shirley was born in Lodi, CA, on July 25, 1945, and has lived





April 29, 2009

Commission not revoking Smith's Food liquor license

*By Keith Trout
Special to Dayton Courier*

After a Smith's Food and Drug attorney talked of changes on procedures and policies regarding alcohol sales and more employee training, the Lyon County Board of Commissioners, acting as the liquor license board, voted unanimously not to revoke the liquor license for the Smith's store in Dayton.

The Smith's liquor license had been placed on the commissioners' meeting agenda for possible revocation by the Lyon County Sheriff's Office.

Sgt. Bryan Parsons repeated at the April 16 commission meeting that county law enforcement's policy is to recommend revocation if a business fails three compliance checks regarding sales of alcohol to minors within a one-year time, as Smith's had done.

After discussion, County Manager Dennis Stark said knowing the compliance checks would continue and that Smith's would be under increased scrutiny, he would recommend not to revoke the liquor license. However, it already appeared from comments that were made the commission was already leaning to that decision.

The revocation item had been on the April 2 commission agenda but was continued until the next meeting because there were no Smith's representatives present and there was a question about its notification, which had gone to Smith's corporate offices in Salt Lake City, but not to the local store.

This was the first time a liquor license had been on a commission agenda for revocation as a result of the compliance checks done by the sheriff's office, with volunteer help from minors who, during an impromptu compliance check, attempt to purchase alcohol.

The compliance program is funded with a federal grant, Enforcing Under Age Drinking Laws program, which was received by the Healthy Communities Coalition of Lyon and Storey Counties in conjunction with the sheriff's office, which operates the program to have the grant pay overtime hours for officers involved in the compliance checks.

The three instances involving Smith's occurred in March and November of 2008 and again in March, 2009, when Smith's employees reportedly sold alcohol to the

minors.

During the April 2 meeting, Lyon County Sheriff Allen Veil said they were working with the Sheriff's Office on a revision of the liquor license provision in County Code to include additional punishments regarding liquor licenses, such as suspensions or fines, but the only option at this point is revocation of the store's liquor license.

Stark and Assistant District Attorney Mark Krueger said work is continuing on that revision.

Kyle McKay, vice president and senior counsel for Smith's, who noted the store director, liquor department manager and front-end manager were also present, spoke at the meeting, saying they had made a number of changes, such as the notification issue, so they would know of the violations.

McKay also noted they'd changed back to a prior policy that a clerk cited for sales to minors would be terminated, after they'd previously backed off that stance due to complaints it was too harsh.

And he also said they'd changed policy that they now requested ID from anyone buying liquor, noting a man born in 1925 had objected to the request. He said the policy said they have to ask anyone, but if a person doesn't have ID, they may sell if the person looks age 35 or older.

McKay said the compliance check failures were atypical, as he knew they'd passed several, and a conviction hadn't resulted in the final instance.

Commissioner Chuck Roberts, who later stressed he wasn't speaking negatively of the sheriff's office, felt this situation appeared to be an overreaction, one that was "almost punishment enough."

After McKay stressed Smith's strives to be a corporate citizen, Roberts continued that he didn't take the situation lightly, while noting the objective of the program is to "keep kids from drinking." But he also added that if another violation "came within 30 days, I won't be so lenient."

McKay said the law says a person can't "knowingly sell alcohol" to a minor, and in that case, he felt employees had taken steps to satisfy themselves. He noted they'd been told the "minor decoys" couldn't lie, so the employee asked the person their birth date, and the decoy recited the birth date on the driver's license.

Of the final point, Chairman Phyllis Hunewill questioned that defense, noting the person's age on the card still was much older than the person attempting to buy the alcohol.

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Regulating Liquor Licenses in the City of Reno

Posted: June 18, 2009 11:28 PM PDT



Jen Jackson
Channel 2 News

The City of Reno is considering changing the way it regulates liquor licenses.

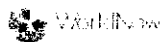
Among the proposed changes, forcing businesses to card anyone and everyone who wants to buy alcohol, regardless of age.

Some say they already I.D. everyone, no matter how old they are, but others say the city needs to back off.

"What the city continuously does is try to cause more red tape. Ninety percent of the people in this business aren't trying to sell to minors. No business is perfect and there needs to be more enforcement." says Eddie Lorton, a property owner that rents to several liquor selling businesses.

The City of Reno says a license to sell alcohol is considered a privilege license, and in the last few months, its started looking at what other cities and states do to regulate them.

It will take time, discussion and revisions before anything is formally changed. City officials say changes could come by the end of August.



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