

**STATE OF INDIANA**

**THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

**IN THE MATTER OF** )

**THE PERMIT OF** )

**VEGAS HOOKAH LOUNGE AND BAR LLC** ) **PERMIT NO. RR49-37158**

**D/B/A FLAIR BISTRO** )

**49 S MERIDIAN STREET** )

**INDIANAPOLIS, INDIANA 46204** )

**PERMITTEE**

**PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW REGARDING**

**THE APPEAL HEARING OF VEGAS HOOKAH LOUNGE AND BAR LLC**

Comes now James W Payne, Hearing Judge, and having presided over the appeal hearing in the above referenced matter on September 27, 2024, recommends the following findings and orders:

**I. BACKGROUND**

On the 2<sup>nd</sup> day of January 2024, the Marion County Alcohol Beverage Local Board (Local Board) heard the application for a transfer of location of the three-way alcoholic beverage permit of the Vegas Hookah Lounge and Bar LLC (Permittee). The local Board voted to recommend denial of the transfer of location by a vote of 4 to 0. After the hearing before the Local Board, the Indiana Alcohol and Tobacco Commission (ATC) reviewed the matter at the full ATC Commission meeting on January 17, 2024, and the ATC unanimously voted to deny the transfer of location application of the Permittee.

On March 7, 2024, Permittee was notified by registered mail that the ATC, on recommendation from the Local Board, had denied Permittee's application to transfer the location of the above-mentioned permit to 49 S. Meridian St., Indianapolis, IN. Permittee

also received in that notification the right to appeal the ATC's action, with the notification indicating that it has 15 days from the receipt of letter to file such appeal.

On March 22, 2024, Norman Reed, Esq. timely filed on behalf of Permittee an appeal of the recommendation by the Local Board and the ATC's denial of its application for transfer of the location of its three-way alcoholic beverage permit and the hearing on that appeal was held on September 27, 2024.

## **II. EVIDENCE BEFORE THE LOCAL BOARD**

- A. The following individuals testified before the Local Board in favor of the Applicant:
  - 1. Tonya Davis, owner of the Permittee.
  
- B. The following evidence was introduced and admitted before the Local Board in favor of the Permittee in this cause:
  - 1. Exhibit 1 – a statement, in summation, from Permittee about operating at the new location.
  - 2. Exhibit 2 – menu for Vegas Entertainment Lounge
  - 3. Exhibit 3- statement of Tonya Davis from the December 18, 2023, meeting with IMPD.
  
- C. The following individual s(Remonstrators) testified before the Local Board against the Permittee in this cause:
  - 1. William Carter, IMPD
  - 2. Kristin Jones, Indianapolis, City County Councilor
  - 3. Taylor Schaffer, Downtown Indy Inc.
  - 4. Joe Calderon, partner of Barnes and Thornburg
  - 5. Rick Coombes, 111 South Meridian Condo Association Inc.
  - 6. Mark Jenkins, Kite Realty
  - 7. Dennis Burton, Stadium Village
  - 8. Jeff Laskowski, nearby resident
  - 9. Jakim Idris, nearby resident

10. Marge Ann Sullivan

D. The following evidence was introduced and admitted before the Local Board against the Permittee in this cause:

1. Numerous documents submitted by William Carter in a black, three ring binder.

E. A list of Remonstrators attending the Local Board meeting on January 2, 2024, including 10 Remonstrators against the Permittee.

**III. EVIDENCE BEFORE THE APPEAL HEARING**

A. The following individuals testified before the Hearing Judge in favor the Permittee:

1. Carlos Jennings, DJ and the production manager
2. Lawrre Owens- social media and assistant to owner
3. Tonya Davis – owner.

B. The following evidence was introduced before the Hearing Judge in favor of the Permittee:

1. Exhibit A- documentation of catered events for Flair Bistro- admitted without objection.
2. Exhibit B- dinner in lunch menu for Flair Bistro - admitted without objection.
3. Exhibit C – flyers for catered events at Flair Bistro- admitted without objection.
4. Exhibit D – WRTV, ABC news article of March 7, 2022- admitted over objection but not for the truth of the content.
5. Exhibit E – news article dated December 29, 2023, not admitted into evidence.
6. Exhibit F – Gang Gang- documentation- not admitted into evidence.
7. Exhibit G- chain of emails between Capt. William Carter and Debbie Bartley, of the Indiana war Memorial Commission, in January 2024 – admitted without objection.
8. Exhibit H – letter of support from Geno Shelton – admitted without objection.
9. Exhibit I – letter of support from Isaac “Ike” Daniels – admitted without objection
10. Exhibit J – Indy Star article for Vegas Bar and Lounge dated July 6, 2022 – admitted without objection.
11. Exhibit K – letter of support for Vegas Bar and Lounge from Tiffany Masten, Indianapolis Police Department – admitted without objection.
12. Exhibit L – flyers for Vegas Lounge – admitted without objection.
13. Exhibit M – email chain between Attorney Norman Reed and Capt. William Carter dated May 29, 2024, admitted without objection.

14. Exhibit N– list of Remonstrators attending the first hearing – admitted without objection.
  15. Exhibit O- email from attorney Norman Reed, Esq. containing memo from Capt. William Carter regarding the December 18, 2023, meeting- admitted without objection.
- C. The following individuals testified before the Hearing Judge against the Permittee in this cause:
1. Capt. William Carter- IMPD.
  2. Scott Hessong-commander, IMPD downtown district.
  3. Kim Evans – Sgt. IMPD community relations.
  4. Joseph Calderon, Esq.-partner, Barnes and Thornburg.
- D. The following evidence was introduced and admitted before the Hearing Judge against the Permittee in this cause:
1. Exhibit 1- on cross examination of Permittee, document showing that IMPD did not have officers working for Permittee – admitted over objection.
  2. Exhibit 2 – certificates of records of the Indiana Department of Revenue for Tonya Davis, Vegas Hookah Lounge and Bar LLC, and Ice Bar and Lounge LLP- admitted over objection.
  3. Exhibit 3 – IC 7.1-3-21-15, delinquency and paying of taxes.

#### **IV. FINDINGS OF FACT**

1. On January 21, 2021, Permittee made an application to transfer ownership of a beer, wine and liquor permit from One Up, LLC to Vegas Hookah Lounge and Bar, LLC.
2. The permit was ultimately transferred to the Permittee, Vegas Hookah Lounge and Bar LLC.
3. The owner of Vegas Hookah Lounge and Bar LLC has always been Tonya Davis.
4. Tonya Davis has also been shown as part owner of Ice Bar and Lounge LLP under permit number RR49-39282.
5. Tonya Davis has also been shown to have or be a part owner of a catering permit under CT49-32468.
6. On October 26, 2023, Permittee filed a request for transfer of location of the above captioned permit from its location in Broad Ripple to 49 S. Meridian St., Indianapolis, IN.

7. After the administrative processes were completed, the request for transfer was set before the Marion County Local Board on January 2, 2024.
8. There is information that refers to, on many occasions, efforts between the Permittee and community organizations and individuals, including IMPD, to discuss the matter of the transfer of location and to share information about the possibility of that transfer of location.
9. It was clear from those discussions and meetings that there would be Remonstrators about the potential transfer of location, specifically addressing what was the community reputation and opinions about the Permittee's operations as well that is the desirability of the geographic location of the permit. See Exhibits M, O, and the appeal request filed by Permittee on March 22, 2024.
10. Those exhibits and testimony at both the Local Board and the ATC appeal hearing addressed issues at the Permittee's Broad Ripple location such as fighting, assaults, disorderly conduct, disturbances, identified from police reports and by IMPD and by verbal testimony, in addition to the Exhibits mentioned in paragraph 9 above.
11. In addition, because Tonya Davis is the owner of the permit listed above and under RR49-39282, Ice Bar and lounge LLP, there was concern expressed about the shooting incident and the assault that occurred at the 56<sup>th</sup> St. location and how that might affect the issue of high and fine reputation of the owner of the Permittee, the interest of support or resistance of the community and the local neighborhood in the transfer of location to 49 S. Meridian St., Indianapolis, IN.
12. The concerns are also evident by the IMPD reports listed in Remonstrator's Exhibit 1 of the Local Board hearing containing a series of police reports of incidences listed in paragraphs 10 and 11 above.
13. All of these communications resulted in a rather large meeting of approximately 30 attendees on December 18, 2023, when Permittee and the potential Remonstrators met.
14. Exhibits 1 and 3 at the Local Board hearing documented the testimony later presented at the hearing on September 27, 2024, that there were concerns expressed at the December 18, 2023, meeting that indicate that there was recognition by the Permittee of issues that needed to be addressed, and proposed solutions or commitments made, such as:

- a. holding monthly meetings with the community
- b. not allowing "pass outs" during events
- c. have IMPD officers at all events
- d. valet only parking
- e. creating a community advisory committee
- f. changing or operating the business under a different name- Flair Bistro
- g. implement an enforced dress code for staff and customers
- h. no longer work with outside promoters
- i. have specially designated closing hours during the week and weekends- 10 PM on weekdays and 12 midnight on weekends
- j. stating that it would be a high-end restaurant
- k. creating a menu consistent with a representation of a high-end restaurant
- l. limitation on types of live entertainment comedians, recording artists, actresses, actors, poets and disc jockeys.

15. At the Local Board hearing on January 2, 2024, regarding the transfer of location request, the owner of Permittee testified as did 10 Remonstrators.

16. On January 2, 2024, the Local Board conducted a lengthy hearing on the request for transfer of location, after which the Local Board by a vote of 4-0 denied the request for transfer of location by the Permittee, citing as its reason that the desire of the neighborhood or the community and that the impact of the business on and in the neighborhood or the community did not justify the transfer request.

17. The Permittee and Remonstrators were notified by ATC of that denial and the recourse of the Permittee and its right to appeal to the full Commission.

18. At one of the early pretrial hearings, and with the number of Remonstrators attending, the Hearing Judge, by agreement of the parties, designated Capt. William Carter of IMPD to be the representative for all Remonstrators and that issues of discovery and communication would go through him.

19. After extensive discovery requests and numerous pretrial hearings, the matter was ultimately heard by the Hearing Judge on September 27, 2024.

20. Carlos Jennings, testified for the Permittee to the following:

- a. He is a DJ, production manager and Council member at the City of Lawrence.
- b. He has worked in clubs in Indianapolis and is familiar with operation of bars.
- c. The atmosphere at the permittee's location was positive and felt like a family reunion he felt safe at the Ice Lounge in Lawrence, Indiana.
- d. He would want this kind of business in Lawrence, Indiana.
- e. He thinks that the Flair Bistro would be a good addition to the downtown area.

21. Lawrre Owens testified for the Permittee to the following:

- a. She is a social media representative and assistant to the owner.
- b. She does graphic designs and digital marketing.
- c. She is the “filter” to make sure there is a good standard with advertising.
- d. She does outreach for the Permittee.
- e. She believes that Indianapolis downtown needs diversity of culture.
- f. Identified exhibit C, flyers and documents.
- g. She was aware of 15 events and that alcohol was catered.
- h. In some documents “Gang Gang” was not a gang in the negative sense.
- i. Stated that IMPD officers work at the Permittee.

22. Tonya Davis, owner of Permittee testified to the following:

- a. “Gang Gang” is not gang related but is a not-for-profit creating solidarity and excitement within the African American community.
- b. Permittee, having been denied at the local board the request to transfer the permit, was not allowed to sell alcohol but was advised by counsel that it should have events catered.
- c. ATC did not inform Permittee that it could not cater and when they were told not to do that, they stopped.
- d. Testified to exhibit A, the list of catered events.
- e. There was no violence at the events and some were canceled.
- f. The permittee has IMPD as off-duty security inside the business.
- g. Sometimes there is security from someplace other than IMPD and that normally there is one or sometimes two individuals there.
- h. She did not understand why previous locations in the downtown area were allowed to operate with multiple violations of ATC rules and regulations.
- i. There were no violations issued against the Permittee by ATC.
- j. That there were no violations inside the Permittee’s premises in Broad Ripple as all were outside or around the corner.
- k. At the Ice Bar and Lounge on January 8, 2023, a shot was fired from outside the club into the premises.
- l. Believes she should be able to operate a license in business and there’s no blemish on her record.
- m. Has refurbished the proposed new building.
- n. Believes that there is an opinion that a Black owner of the business will tarnish the downtown reputation.

23. Capt. William Carter, IMPD testified as a Remonstrator as follows:

- a. He requested tax records from the Indiana Department of Revenue and that the tax records showed that taxes had not been paid by Tonya Davis, the Permittee, or Ice Bar and Lounge. (Remonstrators Exhibit 2).
- b. IC 7.1-3-21-15 as Exhibit 3 demonstrating that state taxes must be paid for a license or permit to be valid.

24. Scott Hessong, Commander IMPD is a Remonstrator, testified as follows:

- a. He is the downtown district commander of Indianapolis, IMPD.
- b. He worked closely to address the issues of violations of state laws and ATC rules and regulations by permit holders in downtown Indianapolis.

- c. He worked closely with the neighborhoods and community in addressing the problems of the downtown area.
  - d. Originally Permittee indicated that it would be open at 10 AM and close at midnight but has now said they will be open until 3 AM- time is a significant problem in the neighborhood and community.
  - e. That IMPD has worked hard to make sure the downtown area of Indianapolis is safe and clean.
  - f. The neighborhood and community are concerned about the Permittee moving to the downtown area.
  - g. Agreed that there were lots of calls regarding activities and violations of state laws and ATC rules and regulations by some downtown permit holders
25. Kim Evans, Sergeant, IMPD, as a Remonstrator, testified as follows:
- a. She serves as a community relations officer between residential and business folks.
  - b. After the meeting on December 18, 2023, the residential and business community in the area did not change their mind about remonstrator.
  - c. The downtown Indianapolis area is diverse with 30 to 35% of the businesses being minority owned.
26. Joseph Calderon, a law partner at Barnes and Thornburg, as a Remonstrator testified as follow:
- a. He and they have no issue with the restaurant but are opposed to a nightclub.
  - b. Commented on the catering permits, specifically for June 10 through June 15, 2024.
  - c. Indicated there were two different caterings on the same date.
  - d. The dinner menu had no pricing.
  - e. The building had no hours posted on the door.
27. Permittee has operated a restaurant 723 Broad Ripple Ave., Indianapolis, IN under the name Vegas Hookah Lounge and Bar since the issuance of its permit under the number captioned above but that it placed its permit in escrow with the ATC in April 2023.
28. Escrow is the common term for a permit deposited with the ATC in a non-operational status pursuant to IC 7.1-3-1.1.
29. Permittee requested to transfer the operation of the permit from the address listed in paragraph 27 to 49 S. Meridian St. and filed its application to transfer location with ATC.
30. Permittee had signed a lease for the premises at 49 S. Meridian St., Indianapolis, IN and engaged in efforts to remodel, refurbish and operate a restaurant at that location with a three-way alcohol permit issued to it under the above-mentioned permit number.
31. Permittee at some point opened the restaurant as a high-end restaurant known as Flair Bistro.
32. Because it had filed with ATC a request to transfer location, the matter was set for hearing before the Marion County local Board on January 2, 2024.



33. After a hearing, which included testimony and evidence, and Permittee being represented by an attorney, the Local Board who voted 4-0 to deny the request to transfer the location.
34. After a review of the recommendation by the Local Board, on March 7, 2024, the full ATC Commission voted 4-0 to accept the recommendation of the Local Board and deny the transfer request.
35. As a result of the order by the ATC denying the transfer of location and since the permit of the Permittee was held in escrow since 2023, Permittee could not sell or dispense alcoholic beverages from 49 S. Meridian Street, Indianapolis, Indiana.
36. Permittee began dispensing alcoholic beverages at its location of 49 S. Meridian St., Indianapolis, IN.
37. During one of the pretrial hearings in this matter which was addressing issues in preparation for the hearing of the appeal of the Local Board recommendation and order of the full ATC, one of the Remonstrators, a neighboring resident, asked the attending participants how the Permittee could be dispensing alcohol at its restaurant since the transfer of location was denied at the Local Board and the permit was in escrow.
38. On review of the records of ATC, it was determined that from February 14, 2024, to June 22, 2024, Permittee had been contracting for catering services through various entities that had catering licenses issued by ATC. (Exhibit A).
39. Those catering events were catered by 3 separate caterers.
40. One of those caterers was Ice Bar and Lounge LLP, which on 11 separate occasions had catered "events" providing alcoholic drinks.
41. Ice Bar and Lounge LLP is in fact part owned by Tonya Davis who is the owner of the above captioned permit.
42. The events listed in Exhibit A include "Events" such as Valentine's Day, soft opening, grand opening, Geno's first day, pre-Easter brunch, Pop Con events, ceremony, Pride Festival, and art show- making them sound as if they were open to the general public.
43. Many of those "events" are one day affairs but several of them are multiple day events including several 6 day "Events".
44. While the catering documentation was filed with ATC, Permittee knew or should have known that they could not and cannot do indirectly what they cannot do directly- especially since its permit was in escrow and on several occasions, they were

- effectively catering to themselves – Tonya Davis owns both Vegas Hookah Lounge and Bar LLC and Ice Bar and Lounge LLP.
45. When this issue was discovered and presented to Permittee, it immediately stopped catering events and serving alcohol, but the willingness to intentionally ignore or circumvent the status of its permit to serve alcoholic beverages is contrary to the spirit and letter of the rules and regulations of ATC.
46. 905 IAC 1.27.4 requires that the ATC consider geographic location for new and transfers of location of existing permits and sets out the factors that may be considered when granting a new or transfer of location application.
47. The Hearing Judge admitted into evidence Remonstrators Exhibits 2 and 3 over the objection of the Permittee because they had relevant and material information to the hearing, even though the Hearing Judge found that such records were not provided during the discovery phase of these proceedings and therefore can be considered belated discovery – in fact, counsel for Permittee was allowed additional, post-hearing time to address those matters after the hearing on September 27, 2024.
48. While those were admitted into evidence, the records of ATC indicate that any issue regarding the taxes presented in those documents have been fully resolved and the hearing judge finds that they therefore are of no consideration or weight in these proceedings.
49. The Hearing Judge finds that there is not a need for the Permittee's services at 49 S. Meridian St., Indianapolis, IN, and there is no desire in the neighborhood or the community for such services at this geographic location.
50. IC 7.1-2-4-22 allows a local board to give greater weight to oral comments provided by a person who owns or operates a business that is located within 1,000 feet or owns real property or resides within 1,000 feet of the proposed location for a permit.
51. At least one Remonstrator against the issuance of the permit and its proposed location owns or operates a business within 1,00 feet of 49 S. Meridian Street, Indianapolis, Indiana.
52. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

## **V. CONCLUSIONS OF LAW**


1. The ATC has jurisdiction over this matter pursuant to IC 7.1-1-2-2 and IC 7.1-2-3-9.
2. The permit application was submitted pursuant to IC 7.1-3-1-4.

3. The ATC is authorized to act upon proper applications. *Id*
4. The Hearing Judge may take judicial notice of the ATC files relevant to a case, including the transcript of proceedings and the exhibits before the local board. 905 IAC 1-36-7(a).
5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the ATC, including the public hearings and ATC records, and considered the need for the services of an alcohol permit in this neighborhood, the desire of the neighborhood and the community to receive such services and the impact of such services on businesses in the neighborhood. IC 7.1-3-19-11(a), 905 IAC 1-36-7(a), 905 IAC 1-36-8(e).
6. The findings are based exclusively upon substantial and reliable evidence in the record of the proceedings and all matters officially noticed in the proceedings. IC 7.1-3-19-11
7. The Hearing Judge specifically reviewed all records of the ATC regarding the Permittee, its owner Tonya Davis, all ATC permits issued to Tonya Davis and other records connected in any way to Tonya Davis.
8. Local alcoholic beverage boards are recommending bodies, and the ATC is the ultimate decision maker which is required to follow the recommendation of the Local Board unless the ATC finds that the Local Board has been arbitrary and capricious or other finding consistent with the ATC review authority. IC 7.1-3-19-11 and IC 7.1-2-4-16.
9. Alcoholic Beverage Commission (ATC) has absolute discretion in granting or denying an application or transfer for a retailer's permit and implied in that power is a duty to act. IC 7.1-3-19-1, IC 7.1-3-19-10.
10. 905 IAC 1-27-1 states that in determining a Permittee's eligibility to hold a permit, the commission may consider the esteem in which the person is held by members of the community and such assessment of character that may reasonably be inferred from evidence submitted in commission proceedings, information contained in public records and other sources of information.
11. 905 IAC 1-27-4 states that upon application for a transfer of location of an existing permit, ATC shall investigate "The desirability of the permit regarding the potential geographic location ... and in making this determination the commission may consider, but is not limited to the following factors":
  - (a) The need for such services at the location of the permit.
  - (b) The desire of the neighborhood or the community to receive such services.
  - (c) Impact of such services on other businesses in the neighborhood or community.
  - (d) Impact of such services on the neighborhood or community.

12. The ATC on January 17, 2024, reviewed the application for a transfer of location in this matter under RR49-37158 and, on motion made and seconded, voted to deny the transfer of location of the three-way beer, wine and alcohol permit by the Permittee.
13. Pursuant to IC 7.1-3-19-11, the Commission shall follow the recommendation of a majority of the members of the local board to grant or deny an application for a retailer's or dealer's permit of any type, unless after the Commission's review of that recommendation, the Commission determines that to follow the recommendation would be
  - a. arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
  - b. contrary to a constitutional right, power, privilege or immunity ;
  - c. in excess of, or contrary to statutory jurisdiction, authority, limitations or rights;
  - d. without observance of procedure required by law; or
  - e. unsupported by substantial evidence.
14. The decision of ATC to uphold the denial by Marion County Local Alcoholic Beverage Board was supported by substantial evidence and was not arbitrary and capricious or otherwise subject to a reason in IC 7.1-3-19-11 that would allow the ATC to overturn the recommended denial.
15. ATC acted properly when it denied the Permittee approval for the transfer of its permit on March 7, 2024, based on these Findings of Fact and Conclusions of Law.
16. Any conclusion of law may be considered a finding of fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the recommendation of the Marion County Local Alcohol Board by a 4-0 voting to deny the application for transfer of location of the permit of Vegas Hookah Lounge and Bar LLC, RR49-37158; and the Hearing Judge having held a hearing on this matter on September 27, 2024, and reviewed the testimony, evidence, and records of ATC of the Permittee, now DENIES Permittee's application for transfer of location of the above-mentioned permit.

All of which is dated this 27<sup>th</sup> day of December 2024

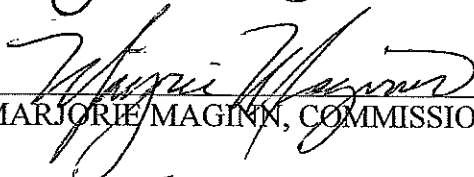
A handwritten signature in black ink, reading "James W. Payne", written over a horizontal line.

James W, Payne, Hearing Judge

Approved this 4<sup>th</sup> day of February, 2025

  
JESSICA ALLEN, CHAIR

  
JAMES PAYNE, VICE CHAIRMAN

  
MARJORIE MAGINN, COMMISSIONER

  
MARK A. JONES, COMMISSIONER

Cc:

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Captain William Carter, IMPD

All other Remonstrators of Record