



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: December 6, 2018

Staff Contact: Lee Plemel, Community Development Director

Agenda Title: For Possible Action: Show cause hearing and Board determination whether to suspend, cancel or revoke Business License No. 6629, issued to Ann Sullivan, owner of Capital City Liquidators, located at 3390 S. Carson Street, for continued operation of the business in violation of the Carson City Municipal Code, pursuant to CCMC 4.04.210(1). (Lee Plemel, lplemel@carson.org)

Staff Summary: The Carson City Code Enforcement Division initiated code compliance actions regarding the subject business on November 5, 2015, for unscreened outside storage and outside storage that exceeds the permitted area (20% of the site area) on property zoned Retail Commercial without a Special Use Permit. The business has continued to violate the City's outside storage requirements and has expanded the outside storage areas since the first notice was given. The Carson City Municipal Code Section 4.04.210 establishes the process for suspending, canceling or revoking a business license based on "good cause," which includes acts prohibited by City ordinance. Staff is recommending the Board revoke the subject business license.

Agenda Action: Formal Action/Motion

Time Requested: 60 minutes

Proposed Motion

I move to [suspend/cancel/revoke] Business License No. 6629, issued to Ann Sullivan, owner of Capital City Liquidators with terms indicated in the written order.

Board's Strategic Goal

Quality of Life

Previous Action

A summary of Ms. Sullivan's alleged violations in the notice and subsequent actions are as follows:

1. On April 22, 2016, Ms. Sullivan entered into a deferred prosecution agreement with Carson City. She paid \$500 in restitution as a result of that agreement. She did not fully comply with that agreement, and so the matter proceeded through prosecution.
2. On August 2, 2017, Ms. Sullivan pled guilty to the a violation of CCMC 18.16.005. She paid \$890 in fines and fees on that citation, she was ordered to be in full compliance within 6 months. She failed to comply.
3. On July 10, 2018, Ms. Sullivan appeared before the court again, and pled guilty to a contempt of court for failing to comply with the court's August 2, 2017 order. She was fined \$500 for the contempt.
4. Also on July 10, 2018, Ms. Sullivan pled guilty to another violation of CCMC 18.16.005. Ms. Sullivan was ordered to pay \$1140 in fines and fees.
5. On October 18, 2018, the Board of Supervisors directed staff to serve a complaint and issue a notice of an order to appear on December 6, 2018, and show cause why the subject business license should not be

suspended, cancelled, or revoked pursuant to CCMC 4.04.210(1), for continued operation of the business in violation of the Carson City Municipal Code.

6. On October 23, 2018, the business owner was served with the Board of Supervisors Order Setting Show Cause Hearing and Complaint and Notice of Order to Appear for Show Cause Hearing.

7. On October 29, 2018, the business owner's attorney submitted a written answer to the complaint, as required within 10 days of notice per CCMC 4.04.210(2).

8. On November 26, 2018, the business owner's attorney submitted a written supplement to the answer, clarifying that Ms. Sullivan does not dispute the facts in paragraphs 1-6 of the complaint.

Background/Issues & Analysis

The Carson City Municipal Code Chapter 4.04 (Business Licenses), Section 4.04.210 (Suspension, cancellation or revocation of licenses or permits) establishes the reasons and process for suspending, canceling or revoking a business license. "Good cause" for such an action includes "any act in the operation of the business [that] is made unlawful or is prohibited by any ordinance, law or rule of Carson City." In accordance with CCMC 4.04.210, the process requires that the Board of Supervisors "may, on its own motion or initiative, . . . institute proceedings to suspend, cancel or revoke a license. . ." The required process is as follows:

1. The Board of Supervisors, by motion, directs staff to serve notice of an order to show cause hearing set by the Carson City Board of Supervisors by mailing a complaint to the licensee containing the location, date, and time of the hearing, and the alleged reasons for the proceedings. (Completed October 18, 2018.)
2. After service of the complaint to the licensee, the licensee has 10 days in which to file a written response to the complaint and file it with the Business License Department. (Served October 23, 2018; response received on October 29, 2018.)
3. The Board of Supervisors conducts a "show-cause" hearing to consider the evidence and written response and, if the Board chooses to suspend, cancel or revoke the license, enters a written order into the record with the applicable action. (Action proposed at this meeting.)

Subject business information:

Business Name: Capital City Liquidators

Business Address: 3390 S. Carson Street

Business License No: 6629

Business Owner: Anne Sullivan

Year of Business Opening at Current Location: 2012

The property is located within the Retail Commercial (RC) zoning district. The purpose of the Retail Commercial zoning district is stated in the Carson City Municipal Code (CCMC) Section 18.04.130 (Retail Commercial), which reads (*emphasis added*):

The purpose of the RC District is to preserve a commercial district limited primarily to offices and retail sale of new merchandise and excluding all uses in the General Commercial and Industrial Districts, except for some service uses which are compatible with the zone. All uses within the RC District shall be conducted within a building, and aside from display windows, be screened from view. Outdoor display and storage of autos, recreational vehicles, or mobilehomes in conjunction with an existing business with sales of autos, recreation vehicles and mobilehomes is allowed in accordance with Division 2 of the Development Standards and provided the vehicles or mobilehomes do not encroach into City or State Right-of-Way without an approved encroachment permit and are screened from adjacent parcels. Temporary outdoor display and sale of merchandise for a period not to exceed 30 days within a calendar year may be authorized by the Director subject to Title 18.02.115.8 (Outdoor Sales and Activities).

According to Section 18.04.130(2), "*Outside Storage, limited by and to subject to Development Standards Division 1 and 1.12 Outside Storage*" is a permitted accessory use in the RC zoning district.

The Development Standards Division 1.12 (Outside Storage) includes the following provisions (*emphasis added*):

1. Storage areas shall be enclosed by a one hundred percent (100%) sight obscuring fence or wall permanently installed and maintained by a minimum height of six (6) feet. No materials and/or equipment shall be stored therein to a height exceeding that of the wall or fence.

2. Storage areas allowed as an accessory use in a commercial or Limited Industrial zoning district shall not occupy more than twenty percent (20%) of the lot area unless a Special Use Permit is first obtained.

Capital City Liquidators first obtained a business license for operating in its current location in 2012. The license was for "new and used office and warehouse items, fixtures and furniture." (See Attachment 7, current business license.) Based on discussions with the business owner, staff determined that the permitted uses under the business license, as defined in CCMC Title 18, were:

1. Secondhand Dealer, sale of new and used office/warehouse furniture and fixtures (the sale of one kind of used commodity, not a Secondhand Business which is the sale of general used merchandise).
2. Antique Sales.
3. Used cars and RV sales.

With the business license application submittal, the business owner provided a site plan showing compliance with the limitation on outside storage to no more than 20% of the parcel area (see Attachment 8). The applicant never fenced in and screened the limited, code-compliant storage area but, instead, utilized a larger area for outside storage.

Despite numerous warnings, notices of violation, and citations, the outside storage area has continued to occupy more area each year since the opening of the business. Refer to Attachment 9 to see the outside storage area before the business was located on the property and in the years since then. As of the completion of this staff report on November 21, 2018, there has been no reduction of outside storage area.

Attachments 2 and 3 are the business owner's responses to the complaint. Essentially, the owner argues that the business "has struggled to control inventory" and needs more time to address the issue. The Carson City Planning Division and Code Enforcement Division have given this business more than adequate time to address the issue. This includes clearly noting the requirement upon issuance of the Business License in 2012 and with the first Notice of Violation in 2015. If storage of outside inventory is a critical part of the business, the business would more appropriately be located in an industrial zoning district where there are no outside storage area limitations. The business owner has had ample time to find a location in an appropriate zoning district. They cannot argue that they should be allowed to violate the code requirements just because they need to do it for their business.

Furthermore, from the start of the code enforcement process, the business owner has been given the appropriate remedy: to apply for and obtain a Special Use Permit to allow additional outside storage area. The business owner has chosen not to exercise this remedy and has instead chosen to continue to ignore the City's repeated requests to bring the property into compliance.

Code Enforcement staff and the District Attorney's office have been unable to get the business to comply with the outside storage regulations through the misdemeanor citation process through the courts. Therefore, based on the continued lack of compliance regarding outside storage, Code Enforcement staff recommends that the

Board of Supervisors revoke the business license until the property is brought into full compliance with the outside storage requirements of the Carson City Municipal Code and all applicable fines and fees are paid.

The documentation of the history of outside storage violations is attached to this staff report and indexed below under "Attachments." The first attachment is the draft Order to Suspend, Cancel, or Revoke the Business License that would be signed and served should the Board of Supervisors choose to suspend, cancel or revoke the license.

Applicable Statute, Code, Policy, Rule or Regulation

CCMC 4.04.210; 18.04.130 (Retail Commercial); Title 18 Appendix, Development Standards, Division 1.12 (Outside Storage)

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number: Planning/Code Enforcement operating budget

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: Unkown. City staff time for ongoing code compliance issues has a negative fiscal impact on the city. Total staff hours are not tracked, but includes Code Compliance Officer time working on monitoring and enforcement of the regulations, as well as Deputy District Attorney's time processing citations and assisting with compliance matters. Capital City Liquidators paid \$270.80 for its annual Business License renewal for 2018, and would likely owe the same for 2019. Individual business sales tax data is not available so it is unknown how much the business contibutes to City sales tax revenues.

Alternatives

1. Do not suspend, cancel or revoke the business license and give the business owner additional time to bring the property into compliance, setting a Board of Supervisors meeting date by which the property must be in compliance.
2. Do nothing and provide alternative direction to staff.

Attachments:

- 1) Draft Board of Supervisors Order to Revoke Business License
- 2) Business owner's response to complaint (dated October 29, 2018)
- 3) Business owner's supplement to October 29, 2018, response (dated November 26, 2018)
- 4) Board of Supervisors Order Setting Show Cause Hearing (dated October 18, 2018)
- 5) Complaint and Notice of Order to Appear for Show Cause Hearing (dated October 19, 2018)
- 6) Affidavit of Proof of Service of Notices (dated October 23, 2018)
- 7) Current business license
- 8) Site plan provided by business owner with business license application in 2012
- 9) Aerial photos 2010-2017
- 10) Code Enforcement Summary Report
- 11) November 5, 2015, Notice of Violation
- 12) April 21, 2016 "Deferred Prosecution Agreement"
- 13) August 28, 2017, "Judgement and Order of the Court"
- 14) June 4, 2018, Department of Alternative Sentencing Violation Report
- 15) July 10, 2018, "Judgement and Order of the Court" #1
- 16) July 10, 2018, "Judgement and Order of the Court" #2
- 17) October 5, 2018, photos of the subject property
- 18) November 21, 2018, photos of the subject property

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)