

CITY COUNCIL REPORT

Public

DATE: September 9, 2016

TO: Mayor and Councilmembers

FROM: Walt Miller, Deputy Police Chief

CC: Josh Copley, Shane Dille and Leadership Team

SUBJECT: Title 4 Liquor Laws (4-244.14; serving, selling or furnishing liquor to an obviously intoxicated person)

This City Council Report is intended to provide information on the enforcement of serving obviously intoxicated individuals in bars. The state statute that applies to this is as follows:

4-244.14- For a licensee or other person to serve, sell or furnish spirituous liquor to a disorderly or obviously intoxicated person, or for a licensee or employee of the licensee to allow or permit a disorderly or obviously intoxicated person to come into or remain on or about the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for a period of time of not to exceed thirty minutes after the state of obvious intoxication is known or should be known to the licensee in order that a non-intoxicated person may transport the obviously intoxicated person from the premises. For the purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

In the past two years the Flagstaff Police Department has investigated four (4) incidents of individuals who were believed to be obviously intoxicated and were served or inside a licensed establishment. Of the four cases, one (1) citation was issued via summons. The other three (3) cases were referred to the Arizona State Liquor Board for review for possible administrative violations. The one case where a citation was issued involved strong evidence of service to an intoxicated individual, the other three cases involved officers observing what they felt to be an intoxicated person enter a bar (never served) and the officers decided to have a review conducted by the liquor board after they asked bar staff to eject the person.

In review of Arizona Revised Statute 4-244.14 it is apparent that when a person becomes disorderly or is obviously intoxicated it is a violation. This statute can be difficult to enforce as an officer must establish probable cause for an arrest and in most cases if not all, the officer himself/herself would need to observe the violation. In these cases the culpable mental state of the licensee or licensee's employee must be clearly established as the statute reads "...*the state of obvious intoxication is known or should be known to the licensee...*" *The statute also states the intoxication should be obvious to a reasonable person.*

By way of comparison, the DUI statute (28-1381.A1) sets standards of presumptive limits of impairment. At a level of .08 BAC (breath/blood alcohol content) a person is considered impaired, which simplifies the enforcement action for officers. Under 4-244.14, there are no presumptive limits as it relies on the "reasonable person standard". This can hinder the enforcement action as what is reasonable to one person may not be reasonable to another. The totality of the circumstances must be taken into account.

Once a person has left an establishment and appears to be obviously intoxicated, probable cause is extremely difficult to establish. The officer(s) do not have firsthand knowledge of how or when the person reached this state of intoxication. The person may have been served when he/she was not obviously intoxicated, and became intoxicated afterward to the point they were asked to leave or until the establishment closes or the patron willingly leaves. Also, without direct observation illustrating the person was served while intoxicated, the possibility exists that drinks may have been purchased by another person.

In regards to the up-coming Tequila Sunrise event, undercover agents from the State Liquor Board will be patrolling the downtown bars as they have done in recent years. These agents will be monitoring bar regulations and will be taking enforcement action of any criminal codes including over serving under 4-244.14. Last year, one arrest was made during the event for this violation.

Throughout the year, any criminal violations enforced by our officers in a licensed liquor establishment are recorded on a Flagstaff Police report. All of these reports are shared with the State Liquor Board, who in turn evaluates whether administrative sanctions will be assessed in addition to the criminal charges written by our officers.

RECOMMENDATION / CONCLUSION

This report is for information only.