ITEM #:	**49**
DATE:	**06-25-24**
DEPT:	**POLICE**

COUNCIL ACTION FORM

SUBJECT: 12-MONTH LIQUOR LICENSE APPLICATION - NEIGHBORHOOD LIQUOR AND SMOKES, 3505 LINCOLN WAY, SUITE 105

BACKGROUND:

Neighborhood Liquor and Smokes (d/b/a Neighborhood Liquor Mart), located at 3505 Lincoln Way, Suite 105, has applied for a new Class E Retail Alcohol License. These state licenses and permits must receive approval by the local authority (City Council), before they can be issued by the State.

COMPLIANCE CHECK HISTORY:

As a reminder, the Police Department conducts compliance checks for establishments who hold liquor licenses in the City of Ames. The compliance checks are completed by taking a person under the legal age to liquor licenses establishments who then attempts to purchase alcohol using their state-issued identification. A business passes the check if the employee asks for identification and rightly refuses the purchase. An establishment fails the compliance check if the employee sells alcohol to the underage person without exercising reasonable care to ascertain whether the person is under legal age.

Under the liquor license that was denied renewal by City Council and is currently under appeal, Neighborhood Liquor Mart failed four compliance checks over a three-year period: March 26, 2021, February 11, 2022, October 20, 2022, and September 29, 2023.

*Iowa Code section 123.50(5) provides the following in regard to a sale by an employee to a minor:

> If an employee of a retail alcohol licensee violates section 123.49, subsection 2, paragraph "h", the licensee shall not be assessed a penalty under subsection 3, and the violation shall be deemed not to be a violation of section 123.49, subsection 2, paragraph "h", for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 3, if the employee holds a valid certificate of completion of the alcohol compliance employee training program pursuant to section 123.50A at the time of the violation, and if the violation involves selling, giving, or otherwise supplying any alcoholic beverage to a person between the ages of eighteen and twenty years of age. A violation involving a person under the age of eighteen years of age shall not qualify for the bar against assessment of a penalty pursuant to subsection 3, for a violation of section 123.49, subsection 2, paragraph "h". A licensee may assert only once in a four-year period the bar under this subsection against assessment of a penalty pursuant to subsection 3, for a violation of section 123.49, subsection 2, paragraph "h", that takes place at the same place of business location. (emphasis added).

In spring 2024, Neighborhood Liquor Mart provided proof to the Alcoholic Beverages Division (ABD) that the employee involved in the sale on September 29, 2023, had a valid certificate of completion of ABD's employee training program, I-PACT. The proof was accepted by ABD and the penalty being contemplated by ABD for the sale that occurred on September 29 was dismissed. As part of the acknowledgement/settlement agreement, Neighborhood Liquor Mart knowingly and voluntarily

admitted that its employee sold an alcoholic beverage to a minor on September 29, 2023.

SUMMARY OF ACTIVITY FOLLOWING DENIAL OF RENEWAL APPLICATION:

On November 8, 2022, the City Council held a public hearing regarding the application for the renewal of Neighborhood Liquor Mart's 12-month liquor license. After hearing from the Chief of Police, a concerned parent, an employee of the business, and the owner of the business, City Council denied the renewal application.

The applicant timely appealed City Council's denial and on September 20, 2023, a hearing was held before an Administrative Law Judge (ALJ) with the Department of Inspections and Appeals. At the hearing, the ALJ heard testimony from the applicant and Geoff Huff, Ames Chief of Police.

On November 9, 2023, the ALJ affirmed the denial. In his proposed order, the ALJ stated that, **"I conclude based on the evidence presented in this case, the Ames City Council acted appropriately and within the range of its authority, finding that the applicant was not a person of good moral character when it denied the 12-month liquor license renewal request from Neighborhood, and that decision should be affirmed."**

The applicant then requested review of the ALJ's proposed decision by the Director's designee, the Division Administrator of the Iowa Department of Revenue's Alcoholic Beverages Division. On April 5, 2024, the Division Administrator of the Alcoholic Beverages Division of the Iowa Department of Revenue affirmed the proposed decision of the Administrative Law Judge. (See Director's Designee's Final Order.)

On April 5, 2024, The Director's designee issued a final order that adopted and incorporated the ALJ's findings of fact, adopted and incorporated the ALJ's the conclusions of law in full. On May 3, 2024, the applicant filed a Petition for Judicial Review with the District Court in Story County, Iowa. The petition is set to be heard by the District Court on October 23, 2024.

Although the applicant is still appealing the license denied on November 8, 2022, ABD has advised the City staff to process the new application before the City Council for approval or denial.

RECOMMENDATION OF THE CHIEF OF POLICE:

Given 1) the series of compliance check failures, 2) the proposed order from the ALJ affirming City Council's November 8, 2022, denial and 3) the affirmation of the ALJ ruling by the Director's Designee, the Chief of Police is recommending denial of the new application. The Chief of Police recommends denial of the new application even if the September 2023 violation is not considered by City Council when deciding whether or not to approve the new license application.

ALTERNATIVES:

1. Deny the application for a 12-month liquor license.

2. Approve the application for a 12-month liquor license.

CITY MANAGER'S RECOMMENDED ACTION:

Compliance checks are conducted by the Ames Police Department and ABD to ensure liquor license holders are complying with their obligation to ensure underage individuals are not being sold alcohol. These compliance checks require the establishment to exercise a minimal level of due diligence in order to pass. In order to comply, the establishment must exercise reasonable care to ascertain whether the buyer is a person under the legal age. To exercise reasonable case, the seller simply asks the customer for identification, confirms the age of the customer, and refuses the sale if the customer is under 21 years old.

The applicant's new license application is before the City Council for approval or denial. The applicant, Neighborhood Liquor and Smokes, failed four such compliance checks in less than three years. An Administrative Law Judge and the Iowa Department of Revenue's Director's Designee affirmed the Council's November 2022 denial. Staff does not have confidence that the applicant will ensure that this establishment will comply with the requirements for holding an alcoholic beverage control license. Therefore, it is the recommendation of the City Manager that the City Council support the advice of the Chief of Police to deny the new application.

ATTACHMENT(S):
23ABD0009 - Dec.pdf
Director's Designee's Final Order - Neighborhood Liquor Mart LLC - Docket No. D-2022-00319 DIA No. 23ABD0009.pdf
Neighborhood CAF - 12.12.23.pdf
2024.03.27 IPACT Settlement Fully Executed.pdf