



MAYOR & COUNCIL COMMUNICATION

DATE: February 3, 2015

REGULAR

ITEM # 12

AGENDA ITEM: Consider Approval of a new Off-Sale Intoxicating Liquor License for Elmo Liquor, located at 11029 10th St N

SUBMITTED BY: Beckie Gumatz, Deputy Clerk

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Adam Bell, City Clerk/Assistant City Administrator
Washington County Sheriff

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCity Clerk
- Questions from Council to Staff.....Mayor Facilitates
- Public Hearing Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECOMMENDER: Staff

FISCAL IMPACT: Approval of license will provide additional \$200 in annual license fees.

SUMMARY AND ACTION REQUESTED: It is respectfully requested that the City Council approve a new Off-Sale Intoxicating Liquor License for Elmo Liquor, located at 11029 10th St N. Following the required public hearing, staff recommends Council approve the application by taking the following action:

“Move to approve a new Off-Sale Intoxicating Liquor License for Elmo Liquor, located at 11029 10th St N.”

LEGISLATIVE HISTORY: One of the co-applicants of Elmo Liquor is the co-owner of the building. The other co-applicant is the manager of the gas station also located in the building. The City has received their completed application, associated fees, and proof of insurance. The background check conducted by the Washington County Sherriff’s office found no issues. Once the City approves the license, it will be submitted to the state for final approval.

The other Off-Sale Intoxicating Liquor Licenses approved by the City are:

- Village Wine & Spirits
- Twin Point Tavern
- Lake Elmo Inn

Pursuant to MN Stat. § 340A.413, Lake Elmo may issue as many off-sale licenses as their ordinances allow. There is no limitation set in the City Code. An off-sale license allows the sale of intoxicating liquor in its original container for consumption off the licensed premises only. An off-sale intoxicating liquor licensee may sell off-sale wine and 3.2 percent malt liquor without an additional license.

The Minnesota Supreme Court has held that a city council is vested with broad discretion in determining whether to issue a liquor license. The Court noted “a city council has the power to refuse a license or to limit the number of licenses to be granted, when, in the judgment of the council, the welfare of the city suggests such action.” *Polman v. City of Royalton*, 311 Minn. 555, 249 N.W.2d 466 (1977). A court will only overturn a legislative decision of a city council when it determines that “the city council has acted arbitrarily, capriciously, or unreasonably.” *Id.*

If Council members have any general questions on liquor license issuance and regulation, the League of Minnesota Cities has a memo on the topic available here:

<http://www.lmc.org/media/document/1/liquorlicensingandregulation.pdf>. The memo is also available from City staff. It is 57 pages, so it is not included.

BACKGROUND INFORMATION (SWOT):

Strengths This will bring another business to Lake Elmo and the associated revenue. There are no other liquor stores within 2-3 miles of this location. The nearest other liquor store location is in Woodbury Commons retail space in Woodbury.

Weaknesses There are currently three off-sale intoxicating liquor licenses in Lake Elmo, all in the Old Village. There was a fourth the last several years, the Lake Elmo Wine Company, but that establishment closed at the end of 2014. Staff would rather not speculate whether the community market can support another business of this nature.

Opportunities The issuance of this license will continue to expand the retail options and services provided to this part of the city. If there are any issues that arise after the issuance, there are procedures that can be taken to suspend or revoke the license.

Threats There is always a possibility of increased law enforcement costs with the addition of any business which provides. Initial estimates provided by the Washington County Sheriff do not anticipate any issues. The Sheriff did suggest that the applicants implement security measures to prevent theft.

RECOMMENDATION: As the application is in order, staff respectfully recommends that the City Council approve a new Off-Sale Intoxicating Liquor License for Elmo Liquor:

“Move to approve a new Off-Sale Intoxicating Liquor License for Elmo Liquor, located at 11029 10th St N.”

ATTACHMENT(S):

Excerpts of state and city applications (a copy of the Application is on file for review)