

ITEM #: 20
DATE: 12-12-23
DEPT: Police

COUNCIL ACTION FORM

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

BACKGROUND:

Neighborhood Liquor and Smokes, located at 3505 Lincoln Way, Suite 105, has applied for renewal of its Class E Liquor License with Class B Wine Permit, Class C Beer Permit (Carryout Beer), and Sunday Sales Privilege. These state licenses and permits must receive approval by the local authority (City Council), before they can be issued by the State.

PREVIOUS COUNCIL ACTION:

On November 8, 2022, the City Council denied an application from Neighborhood Liquor and Smokes for a renewed 12-month license. The applicant subsequently appealed that decision to the Alcoholic Beverages Division (ABD). It is important to note that until a denied applicant has exhausted its appeals, it may continue to operate and sell alcoholic beverages under the privileges of its prior license.

At the time of the denial the Ames Police Department submitted the following information as the basis for the recommendation that Council deny the application:

"The Police Department conducts compliance checks on establishments that hold liquor licenses in the City of Ames. The compliance checks are completed by taking an underage person to liquor licenses establishments who then attempts to purchase alcohol. A business passes the check if the employee asks for identification and correctly refuses the purchase. An establishment fails the compliance check if the employee sells to the underage person.

The Police Department conducted one such compliance check at Neighborhood Liquor and Smokes on March 26, 2021. The employee of Neighborhood Liquor and Smokes sold alcohol to an underage person during the check and was cited.

The Police Department conducted another compliance check on February 11, 2022, and an employee sold alcohol to the underage minor. On May 15, the Iowa Alcoholic Beverages Division (ABD), suspended the establishment's license for 30 days for a second violation in less than two years and fined the business \$1,500 as prescribed in Iowa Code 123.50(3)(b).

The Police Department conducted a follow-up compliance check on October 20th, 2022, when an employee again sold alcohol to a minor. This is the third violation within three years and Iowa Code 123.50(3)(c) prescribes a 60-day suspension and \$1,500 fine. This suspension and fine will be imposed on the establishment by ABD regardless of whether the City Council chooses to approve or deny the requested renewal.

In addition to the three compliance check failures, the Police Department has received complaints from citizens, mostly parents, complaining that the business has sold alcohol and tobacco/vaping products to their underage children. While the Police Department has not been able to substantiate each complaint, the complaints tend to corroborate the staff's observations made during compliance checks.

In the event that the City Council denies the requested license renewal, the denial can be appealed, first to the ABD, then to an Administrative Law Judge, then the Director of ABD, and then District Court. Filing an appeal with ABD places a stay on the denial, and the establishment is allowed to continue to operate until the appeal process is complete. If the appeal(s) are not successful, alcohol may not be sold on the premises for one year, or until a new licensee applies for and is granted a new liquor license."

RECENT EVENTS:

Following the Council's denial of the renewal application, the applicant appealed the Council's decision and an Administrative Law Judge (ALJ) held a hearing regarding the denial where testimony was heard from the applicant and Geoff Huff, Ames Chief of Police. (See attached documents: Closing Argument by Ames Assistant City Attorney, Jane Chang and the ALJ's Proposed Decision).

On November 9, 2023, the ALJ affirmed the denial. Specifically, the ALJ ruled, **"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 decision of the ALJ may be appealed to the Director of ABD.

In addition, on September 29, 2023, Neighborhood Liquor Mart failed another compliance check. The Police Department conducted 52+ compliance checks over that weekend and Neighborhood Liquor Mart was one of seven (and one of two retail establishments) that sold to an 18-year-old and/or a 19-year-old. On this date, the minor entered the store to make a purchase. Video from the store shows the employee asked for an ID, briefly (less than one second) looked at the ID, and then scanned the ID. A large red box pops up on the readout to indicate the person is not 21 or older; however, the employee makes the sale anyway.

This is the fourth compliance check failure in three years (March 26, 2021, February 11, 2022, October 20, 2022, and this newest failure on September 29, 2023). Iowa Code section 123.50(3)(d) prescribes revocation as the penalty for a fourth compliance check violation within three years. Revocation proceedings would not take place until after the most recent violation is adjudicated. The September 2023 violation is scheduled for a bench trial on December 27, 2023. If the employee is found guilty, ABD will take action on the revocation as prescribed by Iowa Code 123.50(3)(d).

Given the overwhelming evidence demonstrating a lack of care by the applicant, a ruling from the ALJ that the applicant is "not a person of good moral character," and the continued pattern of compliance check failures, the Chief of Police is recommending denial of the renewal application.

ALTERNATIVES:

1. Deny the renewal application for a 12-month liquor license.
2. Approve the renewal 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 simply ask the customer for identification, confirm the age of the customer as being less than 21, and deny the sale.

The applicant, Neighborhood Liquor and Smokes, has failed four such compliance checks in less than three years. Repeated fines and suspensions from ABD along with citations from the Ames Police Department have not resulted in a change in practices. An Administrative Law Judge affirmed the Council's previous denial, finding the applicant is not a person of good moral character. Staff does not have confidence that the employees of 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 renewal application.

ATTACHMENT(S):

[23ABD0009 - Dec.pdf](#)

[City of Ames Closing Argument \(1\).pdf](#)