

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 07/20/09

Item No.: 13.e

Department Approval



City Manager Approval



Item Description: Discussion on Liquor License Presumptive Penalty

BACKGROUND

On August 18, 2007, Davanni's Restaurant failed a routine alcohol compliance check, due to previous failures in 2001 and 2005, and after a City Council Hearing on August 13, 2007, received the presumptive penalty of a one day suspension and a \$500.00 fine. The Police Chief made the determination the suspension of Davanni's liquor license would be November 2, 2007.

On November 2, 2007, a plain clothed officer entered Davanni's Restaurant and was sold a beer in violation of their one day suspension. The employee, who was an assistant manager, stated she had forgotten about the suspension.

On February 11, 2008, the Council, as part of a Council Meeting, was asked to allow staff to administer the presumptive penalty for serving alcohol during a suspension which is a revocation of the liquor license. City Attorney Scott Anderson provided Council with guidance indicating Minnesota Statutes, Section 340A.402 provides that a person who has had his or her liquor license revoked is not eligible to be given a license for a period of five years following the revocation. Further, per Scott Anderson, while a license holder would have to reapply for a license once a revocation occurs, he or she may not do so for five years.

On February 11, 2008, the Council, after conducting a public meeting, authorized staff to administer a (60) day alcohol license suspension and a \$2,000 fine to Davanni's for alcohol sales during suspension. The Police Department conducted seven compliance checks during the suspension period and Davanni's staff refused to sell alcohol.

During this public meeting at least one Council Member expressed interest in future Council discussion include reconsideration of ordinance language related to this penalty.

On June 30, 2009, City Attorney Jay Squires provided the attached letter which listed a number of theoretical options available to the Council.

POLICY OBJECTIVE

Council discussion on ordinance language related to alcohol sale during a license suspension.

BUDGET IMPLICATIONS

No Budget Implications at this time.

Jay T. Squires
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June 30, 2009

Lt. Rick Mathwig
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113-1899

RE: *Possible Liquor Code Revisions*
Our File No. 4002(1)-0356

Dear Rick:

The other day we visited and walked through Chapter 302 of City Code dealing with liquor violations. You asked me to present options for possible Code changes, particularly in light of the City's experience with the Davanni license suspension, and the serving of liquor during a suspension period.

Section 302.15 of City Code is the section that establishes penalties for Code violations. Subpart A of this section codifies the language of Minn. Stat. § 340A.402, subd. 2. Specifically, it indicates, in a general way, that violations can result in a suspension of up to 60 days, a revocation, and/or a civil fine of up to \$2,000.

From my experience, many city codes simply contain general penalty language such as that in Subpart A, and punishment for violations is determined on a case-by-case basis. The Roseville Code, however, goes on in Subpart B to establish a schedule of "presumptive penalties" for specific violations. The language of Subpart B indicates that:

...these penalties are presumed to be appropriate for every case;
however, the Council may deviate in an individual case when the
Council finds that there exist extenuating or aggravating

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circumstances...when deviating from these standards, the Council will provide written findings that support the penalty selected.

It is my understanding that there were some concerns, in the Davanni context, that a revocation would be too harsh, particularly when a licensee cannot reapply for a license for a five-year period. This five-year period is established by state law, and cannot be modified. Therefore, it is simply a fact that the Council needs to understand the implications of a license revocation for any licensee.

With respect to the Davanni circumstances, there are a number of theoretical options available as follows:

1. Leave the Code as is.

*The Council already has the freedom to depart from a presumptive penalty of revocation. In other words, recognizing the implication of a revocation, the Council could choose not to impose a revocation in a given case.

2. Remove the sale of alcoholic beverages during suspension offense from the presumptive revocation list.

*This would mean such a violation would fall into the second category of offenses, where a violation might only warrant a presumptive penalty of a written warning, or a small fine and short suspension.

3. Create a new intermediate class of violations.

*This might be considered if the Council believes a presumptive revocation is too severe for certain offenses. For example, the Council might indicate that the presumptive penalty for selling alcoholic beverages during a suspension is disqualification from reapplying for a liquor license for the subsequent license period (one year).

4. Modify Subpart B of Code to read:

The following violations are presumed to require revocation or a significant suspension of the license on the first violation....

Lt. Rick Mathwig

June 30, 2009

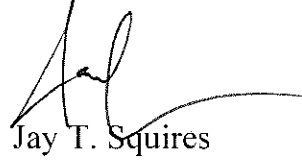
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5. Eliminate Presumptive Penalties.

*The downside is that there is no schedule available to provide guidance and encourage consistency in assessing penalties.

I hope this helps in moving things forward. Let me know if you have questions.

Regards,

A handwritten signature in black ink, appearing to read "Jay T. Squires", with a long horizontal flourish extending to the right.

JTS/sem

cc: Bill Malinen, City Manager

RRM: #132026