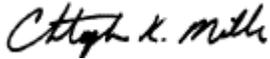



ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 04/25/11
Item No.: 11 . a

Department Approval



City Manager Approval



Item Description: Public Hearing to Consider Amending City Code Chapter 302 to Allow for a Brewery and Off-Sale Retailing Liquor License

1 **BACKGROUND**

2 At the March 28, 2011 City Council meeting, the Council received a formal request from Pour Decisions
3 Brewing Company, LLC; a prospective business which desires to set up a small production brewery that
4 distributes products to retail locations. As proposed, the brewery would produce less than 3,500 barrels of
5 malt liquor per year in accordance with State Statute 340A.301 (*See Attachment*) which establishes a
6 separate regulatory category for smaller breweries. In an effort to build interest in their products they also
7 seek the ability to sell their finished product in a retail setting.

8
9 The owners have been in contact with the City's Planning Staff to ensure that they will meet all zoning
10 requirements. However, the presence of an off-sale retail component triggers the need for a local liquor
11 license under City Code Chapter 302 (*See Attachment*).

12
13 City Code allows for five types of liquor licenses including; on-sale, on-sale wine, club, special Sunday,
14 and off-sale. Currently there is not a specific category for breweries or brew pubs. As a result, the
15 proposed brewery would fall under the off-sale liquor license category. However, City Code limits the
16 number of off-sale liquor store licenses to a maximum of ten – all of which are currently in use. The
17 applicant is seeking a means to obtain a liquor license through the creation of a new category for their
18 business type. In response to the applicant's request, the City Council set a public hearing for April 25,
19 2011 to consider the matter.

20
21 In setting the Hearing, the City Council asked Staff to inquire with other cities on whether they had
22 considered similar licensing requests but had eventually denied the applicant. Staff solicited comment from
23 approximately 100 Minnesota cities via a listserv. Among the respondents, several had recently amended
24 their Code to accommodate similar requests, but none of them had issued a denial.

25
26 Staff will also note that the City received an email from an existing liquor store representative indicating
27 their desire for the Council to deny the request. A copy of the email is attached.

28 **POLICY OBJECTIVE**

29 Although there are some State-imposed restrictions with regard to off-sale locations, municipalities have
30 discretion in how many liquor licenses it issues. While the City has historically limited the number of off-
31 sale establishments, it does not place limits on other establishments that serve alcohol.

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Unlike previous requests for additional licenses geared towards traditional-type liquor stores, this request is associated with a type of business that currently is not in Roseville. This may or may not be a consideration for the Council.

In a recent survey of 10 metro area cities that serve similar populations (25,000 – 45,000) and allow private liquor stores, the following observations were made:

- ❖ 7 Cities had no restrictions on the number of off-sale liquor licenses.
- ❖ 1 City has no restrictions on the number of off-sale liquor licenses; however each location had to be at least 1,000 feet from the next location.
- ❖ 1 City restricted the number of off-sale liquor licenses to no more than 1 per 6,000 residents.
- ❖ 1 City restricted the number of off-sale liquor licenses to no more than 1 per 7,000 residents.

Staff will also note that the Cities of Minneapolis, St. Paul, and Brooklyn Center recently amended their City Code to provide a separate licensing category for small breweries like the one being proposed. City Staff reviewed those cities’ Code in drafting the attached ordinance.

FINANCIAL IMPACTS

Not applicable.

STAFF RECOMMENDATION

Based on previous Council direction, Staff recommends amending City Code Chapter 302 to allow for a new Brewery and Off-Sale liquor license category.

REQUESTED COUNCIL ACTION

Motion to approve (or amend as necessary) the attached Ordinance amending City Code Chapter 302 to allow for a Brewery and Off-Sale Retailing liquor license.

- Prepared by: Chris Miller, Finance Director
Attachments: A: Proposed Ordinance to amend City Code Chapter 302
B: Materials from the 3/28/11 City Council Meeting
C: Email from Mr. Rod Olson, representing Cellars Wines & Spirits at 2701 Lincoln Drive

City of Roseville
ORDINANCE No. _____

**AN ORDINANCE AMENDING TITLE 3, SECTION 302.02B1; REDESIGNATING
EXISTING SECTIONS 302.02K, L AND M AS SECTIONS 302.02L, M AND N
RESPECTIVELY; ADDING A NEW SECTION 302.02K; AND AMENDING SECTION
302.13A; RELATING TO LIQUOR CONTROL**

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1: Title 3, Section 302.02B1 of the Roseville City Code is amended to read as follows:

- 1. Intoxicating liquor licenses shall be of six kinds: On-sale, On-Sale Wine, Club, Special Sunday, Off-sale, and Off-sale Brewery.

SECTION 2: Title 3, Section 302.02K, L and M of the Roseville City Code are redesignated as Sections 302.02L, M and N respectively.

SECTION 3: The following new Section 302.02K is added to Title 3 of the Roseville City Code:

- K. Off-sale Brewery Malt Liquor License: Off-sale brewery malt liquor licenses for the sale of intoxicating liquor shall permit the licensee to sell intoxicating liquor that has been produced and packaged on the licensed premises in accordance with MN Statutes 340A.301, subdivision 7(b).

SECTION 4: Title 3, Section 302.13A of the Roseville City Code is amended to read as follows:

A. Number of Off-sale Liquor Licenses:

- 1. The number of Off-sale Liquor Licenses which may be issued is 10.
- 2. The number of Off-sale Brewery Malt Liquor Licenses is not limited.

SECTION 5: Effective date. This ordinance shall take effect upon its passage and publication.

Passed by the City Council of the City of Roseville this 25th day of April, 2011.

94 *Ordinance: Liquor Control*

95

96

97 (SEAL)

98

CITY OF ROSEVILLE

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101 BY: _____

Daniel J. Roe, Mayor

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103 ATTEST:

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107 _____

William J. Malinen, City Manager

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Who: Pour Decisions Brewing Company, LLC
(contact person: BJ Haun, wjhaun@gmail.com, (612) 360-3543)

Location: 1744 Terrace Drive, Roseville, Minnesota 55113 (location is in the process of being leased)

Proposal: We request that the City Council of Roseville establishes a new license for off-sale of intoxicating liquor specifically for breweries, as permitted by Minnesota state law.

Details: According to Minnesota statute **340A.301**, ...a brewer who manufactures fewer than 3,500 barrels of malt liquor in a year may, with the approval of the commissioner, be issued a license by a municipality for off-sale of malt liquor produced and packaged on the licensed premises. Off-sale of malt liquor shall be limited to the legal hours for off-sale at exclusive liquor stores in the jurisdiction in which the brewer is located, and the malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores. The malt liquor shall be packaged in 64-ounce containers commonly known as "growlers" or in 750 milliliter bottles. The containers or bottles shall bear a twist-type closure, cork, stopper, or plug. At the time of the sale, a paper or plastic adhesive band, strip, or sleeve shall be applied to the container or bottle and extend over the top of the twist-type closure, cork, stopper, or plug forming a seal that must be broken upon opening of the container or bottle. The adhesive band, strip, or sleeve shall bear the name and address of the brewer. The containers or bottles shall be identified as malt liquor, contain the name of the malt liquor, bear the name and address of the brewer selling the malt liquor, and shall be considered intoxicating liquor unless the alcoholic content is labeled as otherwise in accordance with the provisions of Minnesota Rules, part 7515.1100.).

We are requesting the City Council of Roseville to amend city code to create a special license specifically to allow a brewery to sell malt liquor produced and packaged on premises. This license will allow for the sale of 64 ounce growlers or 750 milliliter bottles, in accordance with the above state statute. Modifications to city code to allow growler sales have occurred in Saint Paul, Minneapolis and Brooklyn Center, specifically to allow new breweries to sell growlers of their beer.

B. Brewers and brew pub licenses

1. On-sale brew pub licenses

Minn. Stat. § 340A. 301, subd.
7

A city may issue a brewer or “brew pub” an on-sale intoxicating liquor or 3.2-percent malt liquor license if they meet the following criteria:

- Possess a liquor brewer/manufacturer license issued by the Commissioner of Public Safety.
- Operate a restaurant on the brewery premise.
- Manufacture fewer than 3,500 barrels of malt liquor in a year, at any one licensed premises, for consumption on the premises or for off-sale from the premises
- Does **NOT** have an ownership interest, in whole or in part, in any other licensed intoxicating liquor or malt liquor manufacturer, brewer, importer or wholesaler, except for a similarly licensed restaurant-based brew pub. In addition, the licensee cannot be an officer, director, agent or employee of a licensed manufacturer, brewer, importer or wholesaler.

Retail sales under this license at on-sale or off-sale (discussed below) may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

2. Off-sale brew pub or brewers licenses

Minn. Stat. § 340A. 301, subd.
7.

With the consent of the Commissioner of Public Safety, a city may issue a brewer or “brew pub” an off-sale intoxicating liquor or 3.2-percent malt liquor license if they meet the following criteria:

- Possess an on-sale brew pub license as discussed above and meet the criteria; **OR**
- Manufacture fewer than 3,500 barrels of malt liquor in a year under a valid brewer/manufacturers license issued by the Commissioner of Public Safety.



Retail sales under this license at on-sale or off-sale may not exceed 3,500 barrels per year, provided that off-sales may not total more than 500 barrels.

With a “brew pub” off-sale license, the brewer may only sell at off-sale malt liquor manufactured on the premises. Sales made under this license must meet certain specific packaging requirements detailed in state statute.

Off-sale sales of malt liquor must be limited to the legal hours for off-sale at exclusive liquor stores in the jurisdiction in which the brewer is located, and the malt liquor sold off-sale must be removed from the premises before the applicable off-sale closing time at exclusive liquor stores.

3. Temporary on-sale intoxicating liquor licenses for “brew pubs” or brewers

Minn. Stat. § 340A.404, subd. 10(c)

With the approval of the Commissioner of Public Safety, a city may issue to a brewer, who manufactures fewer than 3,500 barrels of malt liquor in a year, a temporary license for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer.

The license may authorize sales for up to four consecutive days. It may also authorize sales on premises other than premises the licensee owns or permanently occupies. It may also provide that the licensee can contract for intoxicating liquor catering services with the holder of a full-year on-sale intoxicating liquor license issued by the city. This type of situation is not the same as a caterer’s permit, which is discussed in further detail in a later section of this memo.

The temporary licenses are subject to the terms imposed by the city, including fees. Such licenses are not valid until approved by the Commissioner of Public Safety.

A city may issue a limited number of temporary licenses in a single year. In no case can a city issue more than 12 days worth of temporary licenses to a single organization per year. In addition, a municipality with a population of 5,000 or greater may not issue more than one temporary license for the sale of alcoholic beverages to any one organization or registered political committee, or for any one location, within any 30-day period unless the licenses are issued in connection with an event officially designated a community festival by the municipality.

A brew pub or brewer who obtains a temporary on-sale intoxicating liquor license must carry liability insurance in the amounts dictated by statute to cover dram shop claims related to the Civil Liability Act.

4. Brew-on-premises stores

Minn. Stat. § 340A.33.
27 C.F.R §§ 25.205 - .206.

A brew-on-premises store is a commercial establishment in which individuals make malt liquor on the premises for personal and family use only, and not for resale, using ingredients or materials or both supplied by the establishment. No license is required to operate a brew-on-premises store if the establishment is operated in accordance with federal regulations.

Alcoholic beverages may not be sold or otherwise provided to customers of a brew on premises store, unless the owner of the brew on premises store holds the appropriate liquor license.

CHAPTER 302 LIQUOR CONTROL

SECTION:

- 302.01: Adoption of State Law
- 302.02: License Required
- 302.03: Application
- 302.04: License Fees
- 302.05: Ineligibility
- 302.06: Delinquent Taxes and Charges
- 302.07: Granting of License
- 302.08: Conditions of License
- 302.09: Hours of Sale
- 302.10: Evacuation of On-sale Establishments
- 302.11: Sale Outside of Structure on Licensed Premises
- 302.12: On-sale of Intoxicating Malt Liquor
- 302.13: Off-sale License Regulations
- 302.14: Prohibited Conduct
- 302.15: Civil Penalty

302.01: ADOPTION OF STATE LAW:

Except where inconsistent with this Chapter, the provisions of Minnesota Statutes, chapter 340A, relating to the definition of terms, licensing, consumption, sales, conditions of bonds and licenses, hours of sales and all other matters pertaining to the retail sale, distribution and consumption of non-intoxicating malt liquor, wine and intoxicating liquor are adopted and made a part of this Chapter as if set out in full. (Ord. 972, 5-13-85)

302.02: LICENSE REQUIRED:

- A. General Requirement: No person, except a wholesaler or manufacturer to the extent authorized under State license, shall directly or indirectly deal in, sell or keep for sale in the City any non-intoxicating malt liquor or intoxicating liquor without a license to do so as provided in this Chapter.
- * B. Types of Licenses:
 - 1. Intoxicating liquor licenses shall be of five kinds: On-sale, On-sale Wine, Club, Special Sunday and Off-sale.
 - 2. Non-intoxicating malt liquor licenses shall be of two kinds: On-sale and Off-sale.
- C. Expiration: All intoxicating liquor and non-intoxicating malt liquor licenses shall expire on December 31 of each year.

- D. On-sale Intoxicating Liquor Licenses: On-sale intoxicating liquor licenses shall be issued only to hotels and restaurants and shall permit On-sale of intoxicating liquor only, for consumption on the licensed premises only, in conjunction with the sale of food. For the purposes of this Chapter, the following definitions are adopted:

HOTEL: A hotel is any establishment having a resident proprietor or manager where, in consideration of payment, food and lodging are regularly furnished to transients, which maintains for the use of its guests not less than 50 guest rooms with bedding and other usual, suitable and necessary furnishings in each room, which is provided at the main entrance with a suitable lobby, desk and office for the registration of its guests, which employs an adequate staff to provide suitable and usual service and which maintains, under the same management and control as the rest of the establishment and has, as an integral part of the establishment, a dining room of at least one thousand 1,800 square feet.

Such dining room shall have appropriate facilities for seating not less than one 100 guests at one time. Where the guest seating capacity is between 100 and 174, at least 50% of the gross sales of the restaurant portion of the establishment must be attributable to the service of meals. Where the seating capacity is 175 or more, at least 25% of the gross sales of the restaurant portion of the establishment must be attributable to the service of meals.

RESTAURANT: A restaurant is any establishment, other than a hotel, having appropriate facilities to serve meals, for seating not less than 100 guests at one time and where, in consideration of payment, meals are regularly served at tables to the general public and which employs an adequate staff for the usual and suitable service to its guests.

Where the seating capacity of the establishment is between 100 and 174, at least 50% of the gross sales of the establishment must be attributable to the service of meals.

Where the seating capacity is 175 or more, at least 25% of the gross sales of the establishment must be attributable to the service of meals.

- E. On-sale Wine Licenses: On-sale wine licenses shall be issued only to restaurants meeting the qualifications of Minnesota Statutes 340A.404, subdivision 5, and shall permit only the sale of wine not exceeding 14% alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. To qualify for a license under this subsection, a restaurant must have appropriate facilities for seating at least 25 guests at a time, regularly serve meals at tables to the public for a charge and employ an adequate staff. (Ord. 972, 5-13-85)
- F. Club License: Club licenses for the sale of intoxicating beverages to be consumed on the licensed premises may be issued to any clubs meeting the requirements of Minnesota Statute 340A.404, subdivision 1. (1995 Code)
- G. Special License for Sunday Sales: A special license authorizing sales on Sunday in conjunction with the serving of food may be issued to any hotel, restaurant or club which has an On-sale license. A special Sunday license is not needed for Sunday sales of wine license.
- * H. Off-sale Intoxicating Liquor Licenses: Off-sale licenses for the sale of intoxicating liquor shall permit the licensee to sell intoxicating liquor in original packages for consumption off the premises only. Such licenses may be issued in accordance with the provisions of this Chapter.
- I. On-sale Non-intoxicating Malt Liquor Licenses: On-sale licenses shall permit the licensee to sell non-intoxicating malt liquor for consumption on the premises only.
- J. Off-sale Non-intoxicating Malt Liquor Licenses: Off-sale licenses shall permit the

licensee who allows such consumption or allows intoxicating liquor or non-intoxicating malt liquor to remain unsecured on the licensed premises beyond the 30 minute limit is in violation of this subsection. (Ord. 1056, 3-16-1989)

302.11: SALE OUTSIDE OF STRUCTURE ON LICENSED PREMISES:

The sale of wine and intoxicating liquors, pursuant to any of the licenses issued in accordance with this chapter, shall be limited to sale and consumption inside of a structure on the licensed premises, unless the licensee applies for and receives permission from the City Council for sale and consumption outside of a structure on the licensed premises by an endorsement to the license. Issuance of an outside sale and consumption endorsement shall be accomplished as follows:

- A. Application: The licensee shall make written application using forms provided by the city and there shall be a nonrefundable application fee of twenty five dollars (\$25.00) at the time of making application.
- B. Notice: The owners of all property adjacent to the licensed premises will be given written notice of the fact that such an application has been made and of the date and time of the City Council meeting at which the application will be considered by the City Council.
- C. Endorsement: The City Council may, in its discretion, issue such an endorsement or refrain from issuing such an endorsement and may impose conditions to the endorsement such as, but not limited to, screening, time of day limitations and noise limitations. (Ord. 972, 5-13-1985)

302.12: ON-SALE OF INTOXICATING MALT LIQUOR:

The holder of an on-sale wine license who is also licensed to sell non-intoxicating malt liquor and whose gross receipts are at least 60% attributable to the sale of food may sell intoxicating malt liquor at on-sale without an additional license. (Ord. 1021, 9-28-1987)

302.13: OFF-SALE LICENSE REGULATIONS:

In addition to the other requirements of state law or this chapter, the following regulations are applicable to off-sale intoxicating liquor licenses:

- * A. Number of Licenses: The number of licenses which may be issued is ten.
- B. Use of License: If a license is not used within one year, the license shall automatically terminate.
- C. Size of Premises: A licensed premises shall have at least 1,600 square feet of sales floor space including sales coolers and excluding walk-in storage coolers.
- D. Considerations: In addition to the other requirements of this chapter and applicable state law in determining whether or not to issue an off-sale license for a particular premises, the City Council shall consider all relevant factors relating to the health, safety and welfare of the citizens of the city such as, but not limited to, effect on market value of neighboring properties, proximity to churches and schools and effect on traffic and parking.
- E. Delivery of Alcoholic Beverages; Identification Required: A person authorized to serve, sell, or deliver alcoholic beverages must determine through legitimate proof of identification that all deliveries of wine, beer, and alcoholic beverages are accepted only by eligible persons who are 21 years of age or older.

Subject: PH Brew Pub Off-premise liquor license/Cellars

-----Original Message-----

From: support@civicplus.com [mailto:support@civicplus.com]

Sent: Tuesday, March 29, 2011 6:11 PM

To: *RVCouncil; Margaret Driscoll; Bill Malinen

Subject: PH Brew Pub Off-premise liquor license/Cellars Online Form Submittal: Contact City Council

The following form was submitted via your website: Contact City Council

Subject: Proposed Brew-pub off premise license

Name:: Rod Olson/The Cellars Wines and Spirits

Address:: 2701 Lincoln Drive

City:: Roseville State: : MN Zip:: 55113

Phone Number:: 651-636-4404

Please Share Your Comment, Question or Concern: Hello Roseville City Council Members,

We have heard word from a couple of people that there has been a proposal to allow a new brew-pub that would potentially open within Roseville or more specifically possibly a few doors away from our store location. My understanding is that they would like to get a license allowing them to fill "growlers" of beer for people which they will sell for the people to consume elsewhere. This to me is exactly the same thing as an "off-premise license" as the product would be consumed off of their premises. It was our understanding that the city of Roseville currently was planning on staying with 10 off-premise licenses which is entirely adequate for a population that is not even on the rise. Especially considering that they could be extremely close neighbors to us and adversely would affect our sales, we are opposed to this license being granted. The people applying for the license will try to tell you that there is no harm in them selling their Growlers for home consumption, but the bottom line is that there are 10 other purveyors of the same sort of home consumption products already in possession of licenses to fulfill those needs as well as on-premise establishments such as Granite City that fill 750mls and Growlers. While they might also lead people to believe that their off-premise products might encourage other shoppers to enter the area and greater tax revenue would accrue, the fact is that our customers as well as customers at other local stores would lose business as invariably people would want to "go check out the new place".

Eventually their proposed sales plan could morph into something more detrimental to the existing license holders. For example, a decade ago "Forever Minnesota" on Fairview Avenue requested a liquor license stating that they were only going to carry products from Minnesota and now they carry products from all over the country and beyond. Growlers could just be a starting point of expanding their business.

We'd like to request that off-premise liquor licenses continue to remain at the current number. Just because St. Paul, Mpls and Brooklyn Park have deemed that such variances to licenses are ok, it still means that the numbers of off-premise licenses are increased. The "pie" is sliced into enough pieces at this time. Ten licenses should not translate into "ten plus a little more".

-Rod Olson(mgr)

The Cellars Wines and Spirits

2701 Lincoln Drive

651-636-4404