



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DEB WOODS, DEPUTY CITY CLERK

DATE: OCTOBER 3, 2023

AGENDA TEXT: NEW LIQUOR LICENSE APPLICATION – A request to approve an application for a new Fermented Malt Beverage (FMB) and Wine Retail Liquor License (Off-Premises) for Family Dollar Stores of Colorado, LLC dba Family Dollar #27356 located at 1668 W. Highway 6 & 50

BACKGROUND

Family Dollar Stores of Colorado, LLC dba Family Dollar #27356 has submitted an application to the Fruita City Clerk's Office to be granted a Fermented Malt Beverage (FMB) and Wine Off-Premises Liquor License at 1668 W. Highway 6 & 50 in Fruita and has requested a concurrent review with the Liquor Enforcement Division and paid the appropriate fee to the Colorado Department of Revenue Liquor Enforcement Division for the concurrent review.

FERMENTED MALT BEVERAGE (FMB) AND WINE RETAIL LIQUOR LICENSE (OFF-PREMISES)

On November 8, 2022 the People of the State of Colorado voted to amend Articles 3 and 4 of Title 44 in the Colorado Revised Statutes. As a result, beginning on March 1, 2023, the Fermented Malt Beverage (FMB) Off-Premises Retailer license was removed as an available license type category and the State Licensing Authority automatically issued existing FMB retailers a new license type: the Fermented Malt Beverage and Wine Retailer license, allowing the ability for these retailers and all future FMB retailers to sell malt and vinous (wine) products in sealed containers for off-premises consumption. This license type is not allowed to sell spirituous liquors.

CONCURRENT REVIEW

The following section from the Colorado Liquor Rules outlines the provisions for a concurrent review on a liquor license application.

Regulation 47-324. Concurrent Application Review.

- A. A local licensing authority, or a license applicant with local authority approval, can request that the state licensing authority conduct a concurrent review of a new license application prior to the local licensing authority's final approval of the license application. Local licensing authorities who permit a concurrent review will continue to independently review the applicant's license application for the purpose of establishing the reasonable requirements of the neighborhood, the suitability of the

character, record and reputation of the applicant and its principals, the fitness of the applicant's premises for occupancy in compliance with the provisions of Articles 46 and Article 47 of Title 12 C.R.S., and any other provisions required for local authority determination as provided for in these articles.

- B. When conducting a concurrent application review, the state licensing authority will advise the local licensing authority of any items that it finds that could result in the denial of the license application. Upon correction of the noted discrepancies, the state licensing authority will notify the local licensing authority of its conditional approval of the license application subject to the final approval by the local licensing authority. The state licensing authority will then issue the applicant's state liquor license upon receiving evidence of final approval by the local licensing authority.

ISSUANCE OF A NEW LIQUOR LICENSE

When acting on the issuance of a new liquor license, in addition to the moral character of the applicants, the City Council shall consider following issues when deciding whether or not to issue a license:

1. The reasonable requirements of the neighborhood;
2. The desire of the adult inhabitants as evidenced by petitions, remonstrance's or otherwise;
3. All other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority. (City Council)

No license shall be issued to or held by:

1. Any person until the annual fee therefore has been paid;
2. Any person who is not of good moral character;
3. Any partnership, association, or company any of whose officers, or any of whose members holding ten percent or more interest therein, are not of good moral character;
4. Any person unless such person's character, record, and reputation are satisfactory to the respective licensing authority;
5. Any natural person under twenty-one years of age.

REQUIREMENTS OF THE NEIGHBORHOOD/DESIRE OF ADULT INHABITANTS

The applicant recruited the services of Alcohol Petitioning Services to conduct the Neighborhood Survey, with the "neighborhood" defined as the area between L Road to the north and the Colorado National Monument to the south, and between 15 ½ Road to the west and 20 Road to the east. The summary of the report lists the following results:

	Businesses	Residents	Total
Signatures in Favor – "Yes"	2	37	39
Signatures – "No" Opposed	5	24	29

Not Applicable "N/A"	0	4	4
TOTAL	7	66	72

MASTER FILE

The following section from the Colorado Liquor Code outlines the definition of a "Master File."

44-3-304. State licensing authority - application and issuance procedures - definitions - rules.

- (1) (c) As used in this part 3, "master file" means a file that is established by the state licensing authority and that contains licensing and background information for an applicant seeking licenses pursuant to this article 3 in multiple locations. The master file shall be available to the local licensing authority.
- (2) (a) Before granting any license for which application has been made, the state licensing authority or one or more of its inspectors may visit and inspect the plant or property in which the applicant proposes to conduct business and investigate the fitness to conduct such business of any person or the officers and directors of any corporation applying for a license. In investigating the fitness of the applicant or a licensee, the state licensing authority may have access to criminal history record information furnished by a criminal justice agency, subject to any restrictions imposed by such agency. In the event the state licensing authority takes into consideration information concerning the applicant's criminal history record, the state licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

The following section from the Colorado Liquor Rules outlines the provisions for Master Files.

Code Of Regulations, 1 C.C.R 203-2

Regulation 47-307 Master Files

- B. A master file applicant can meet the minimum requirements of this regulation by having an interest in separate licensed locations, as long as there are a minimum of five (5) total licenses approved.
- E. No local licensing authority shall require applicants with an approved master file to file additional fingerprints or background investigation forms.

When a liquor licensee has a "Master File" with the state licensing authority, it is the state (not the local licensing authority) who requisitions fingerprints to be checked by the CBI and FBI for any evidence of criminal history. It is also the state who requisitions the Individual History Records (Form DR 8404-I), which are the forms that the local licensing authority uses to conduct background investigations on applicants who are non-Master File applicants. The state's letter reports that CBI and FBI found no record of any criminal history for the three persons from Family Dollar Stores of Colorado, LLC who submitted their fingerprints and Individual History Records.

FISCAL IMPACT

Unknown

APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City of Fruita is charged with protection of the public health, safety and welfare. The consideration of the issuance of a new Fermented Malt Beverage (FMB) Off-Premises Liquor License by the City Council ensures that the proposed establishment is desired in the neighborhood and the applicant is of good moral character.

OPTIONS AVAILABLE TO THE COUNCIL

1. Approve the Fermented Malt Beverage (FMB) and Wine Off-Premises Liquor License for Family Dollar Stores of Colorado, LLC dba Family Dollar #27356 located at 1668 W. Highway 6 & 50 as proposed
2. Approve the Fermented Malt Beverage (FMB) and Wine Off-Premises Liquor License for Family Dollar Stores of Colorado, LLC dba Family Dollar #27356 located at 1668 W. Highway 6 & 50 with additional requirements
3. Deny the issuance based on the requirements of the needs of the neighborhood and the desires of its adult inhabitants and/or the character of the applicant.

RECOMMENDATION

It is the recommendation of the staff that Council, by motion:

- **APPROVE THE APPLICATION FOR A FERMENTED MALT BEVERAGE (FMB) AND WINE (OFF-PREMISES) LIQUOR LICENSE FOR FAMILY DOLLAR STORES OF COLORADO, LLC DBA FAMILY DOLLAR #27356 LOCATED AT 1668 W. HIGHWAY 6 & 50**