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**TO:** FRUITA CITY COUNCIL AND MAYOR

**FROM:** DEBRA WOODS, DEPUTY CITY CLERK

**DATE:** JANUARY 16, 2024

**AGENDA TEXT:** NEW LIQUOR LICENSE APPLICATION – A request to approve a new Hotel and Restaurant – Malt, Vinous and Spirituous Liquor License for Hot Tomato Pizzeria, LLC dba Hot Tomato Pizzeria located at 124 N. Mulberry Street

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## **BACKGROUND**

Hot Tomato Pizzeria, LLC dba Hot Tomato Pizzeria has submitted an application and all of the necessary paperwork and fees to be granted a Hotel & Restaurant Liquor License at 124 N. Mulberry Street. The applicant has requested that the Colorado Liquor Enforcement Division (state licensing authority) conduct a concurrent review of the application, which means that the state licensing authority began its approval process while the local authority was still conducting its own.

Background checks were conducted with the Federal Bureau of Investigation, Colorado Bureau of Investigation, Mesa County Sheriff's Department, and Police Departments from the Cities of Grand Junction and Fruita. None of these law enforcement agencies found anything of concern that would hinder the issuance of the license.

The Colorado Liquor License Application, Preliminary Findings Report and diagram are attached hereto.

The following is a list of questions and guidelines to aid the Council in the decision-making process to determine if the liquor license should be approved. These guidelines are from Colorado State Statutes.

### **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.

- C. All applications submitted for concurrent review must be accompanied by all applicable state license and application fees. Any applications that are later denied or withdrawn will allow for a refund of license fees only. All application fees provided by an applicant shall be retained by the respective licensing authority.

### **Code of Regulations, 1 C.C.R 203-2**

#### **Regulation 47-310 Application – General Provisions**

E. A licensing authority (the City Council in this case) is required to make a determination as to the character, record and reputation of the applicants for new licenses. The City Council may consider the following factors when assessing the character of the applicants, which may include but not be limited to the following:

1. The applicant or licensee has submitted false applications, made willful misrepresentations and/or committed fraudulent acts;
2. The application or licensee has a criminal history of crimes of moral turpitude. By way of example, crimes of moral turpitude shall include but not be limited to, murder, burglary, robbery, arson kidnapping, sexual assault, illegal drugs or narcotics convictions;
3. The applicant or licensee has had previous alcohol beverage licenses denied, suspended or revoked as a result of violations of law;
4. The applicant or licensee has been found to be delinquent in the payment of any state or local taxes, and record of such tax delinquency has been filed in a court having jurisdiction, or has been made a public record by some other lawful means;
5. The applicant or licensee has committed statutory violations resulting in the suspension, revocation or denial or any other professional license. For purpose of this section, the suspension or revocation or a state-issued driver's license shall not be considered.

#### **ISSUANCE OF A NEW LIQUOR LICENSE**

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.

Background checks were conducted by staff on the one individual who will be on the liquor license and because there were no crimes “of moral turpitude” resulting from those, staff finds that there are no grounds to deny the liquor license application based on moral character.

In addition, pursuant to **44-3-301(2)(a), C.R.S. Licensing in general:**

Before granting any license, all licensing authorities shall consider, except where this article 3 and article 4 of this title 44 specifically provide otherwise, the reasonable requirements of the neighborhood, the desires of the adult inhabitants as evidenced by petitions, remonstrances, or otherwise, and all other reasonable restrictions that are or may be placed upon the neighborhood by the local licensing authority.

Provided as evidence of the reasonable requirements of the neighborhood and the desires of the adult inhabitants, the applicant submitted a neighborhood survey that was signed by 10 people, 10 of whom were in favor of the Fruita City Council’s granting of the liquor license and do not feel that the reasonable requirements of the neighborhood are already being met by other existing outlets.

### **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 Hotel and Restaurant Liquor License by the City Council ensures that the proposed establishment is desired in the neighborhood and the applicants are of good moral character.

### **OPTIONS AVAILABLE TO THE COUNCIL**

1. Approve the Hotel and Restaurant – Malt, Vinous and Spirituous Liquor License for Hot Tomato Pizzeria, LLC dba Hot Tomato Pizzeria located at 124 N. Mulberry Street as proposed based on the character of the applicants and the needs of the neighborhood and the desires of the adult inhabitants
2. Approve the Hotel and Restaurant – Malt, Vinous and Spirituous Liquor License for Hot Tomato Pizzeria, LLC dba Hot Tomato Pizzeria located at 124 N. Mulberry Street based on the character of the applicants and the needs of the neighborhood and the desires of the adult inhabitants *with additional requirements*
3. Deny the issuance of the liquor license based on the character of the applicants and the needs of the neighborhood and desires of the adult inhabitants

### **RECOMMENDATION**

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

- **APPROVE THE ISSUANCE OF A HOTEL AND RESTARURANT – MALT, VINOUS AND SPIRITUOUS LIQUOR LICENSE FOR HOT TOMATO PIZZERIA, LLC DBA HOT TOMATO PIZZERIA LOCATED AT 124 N. MULBERRY STREET**