



Legislation Details (With Text)

File #: 24-0030 **Version:** 1

Type: Ordinance **Status:** Agenda Ready

File created: 1/5/2024 **In control:** City Council

On agenda: 1/16/2024 **Final action:**

Title: Waive the first reading and pass the ordinance amending Section 3-3-11:1 of the Naperville Municipal Code to keep the cap on the Class C - Tavern liquor license at four and pass the ordinance approving a variance from Section 3-3-11:1 to issue a Class C - Tavern liquor license to ZSRM, Inc for the business located at 634 E. Odgen Avenue (requires six positive votes)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Pepe's Variance Request, 2. Class C ordinance, 3. Pepe's Variance 2024, 4. DRAFT Liquor Commission Minutes 1_4_24

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------|--------|--------|
| 1/16/2024 | 1 | City Council | passed | Pass |

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Waive the first reading and pass the ordinance amending Section 3-3-11:1 of the Naperville Municipal Code to keep the cap on the Class C - Tavern liquor license at four and pass the ordinance approving a variance from Section 3-3-11:1 to issue a Class C - Tavern liquor license to ZSRM, Inc for the business located at 634 E. Odgen Avenue (requires six positive votes)

DEPARTMENT: Legal Department

SUBMITTED BY: Jennifer Bonner, Senior Assistant City Attorney

BOARD/COMMISSION REVIEW:

On January 4, 2024, the Liquor Commission considered ZRMC, Inc d/b/a Pepe's Restaurant and La Cantina's ("Pepe's Restaurant and La Cantina") request for a Class C - Tavern liquor license and unanimously recommended City Council approval.

BACKGROUND:

The Class - C Tavern license is a combined liquor license, which allows for the on-premises consumption of alcoholic liquor and package sales of alcoholic liquor for off-premises consumption. It does not require the service of food. Currently, there are four Class C licensees: Judd Kendall VFW Post 3873, located at 908 Jackson Avenue, #02; Miss Kitty's Saloon, located at 634 E. Odgen Avenue; The Lantern, located at 8 W. Chicago Avenue, and White Tavern, located at 423 E. Odgen Avenue.

The Naperville Municipal Code provides that the number of available Class C - Tavern liquor licenses are automatically and simultaneously reduced by one upon revocation, non-renewal, or termination of

a current license. It also requires a super majority vote of City Council to increase the cap to allow for issuance of a new Class C - Tavern license.

The Class C - Tavern license also requires that premises be in a shopping center containing at least 60,000 square feet unless the licensee is grandfathered in as having been established prior to the square footage location limitation.

DISCUSSION:

In 2022, Heinen's Grocery Store purchased the strip center at 1200 E. Chicago Ave. (Butera plaza), and it intends to raze the entire strip center and construct a new grocery store in its place. The strip center is vacant except for Pepe's Restaurant and La Cantina, which is located at 1270 E. Chicago Avenue. Pepe's lease expires this month, and it has been looking to move to a new location in Naperville. The owners of Pepe's are interested in acquiring Miss Kitty's Saloon. The City's Code requires City Council approval to maintain the current cap of four Class C - Tavern liquor licenses and authorize the issuance of a Class C license to the owners of Pepe's Restaurant and La Cantina so that it can relocate La Cantina to Miss Kitty's location.

Miss Kitty's Saloon is in a shopping center that is less than 60,000 square feet because it was grandfathered in due to it predating this requirement. Consequently, a variance is required to allow for the continued operation of a Class C - Tavern liquor license in that location.

The variance process for liquor licensing sets forth the following factors for consideration of a variance:

1. The variance is in harmony with the general purpose and intent of the Liquor Control Ordinance and the variance is not precedent setting; and
2. Strict enforcement of the Liquor Control Ordinances would result in practical difficulties due to special and/or unusual circumstances surrounding the party and circumstances substantially outside the petitioner's control; and
3. The variance, if granted, will not alter the essential character of the liquor establishment or underlying liquor license requirements and will not be a substantial detriment to adjacent property.

Due to the redevelopment of their current location, Pepe's Restaurant and La Cantina is relocating to a location that has housed a tavern for numerous years. Pepe's Restaurant and La Cantina has held a liquor license without any violations and submitted the \$400 fee for processing the variance. If the variance is granted, Pepe's Restaurant and La Cantina is still required to comply with all other conditions of the Class C - Tavern liquor license and the Naperville Municipal Code. The only exception would be as to the size of the shopping center.

Draft minutes from the January 4, 2024 Liquor Commission meeting are attached.

FISCAL IMPACT:

Continued receipt of liquor license fees and corresponding sales tax