

**STAFF SUMMARY  
CITY OF MINNETONKA  
CITY COUNCIL STUDY SESSION  
MONDAY, MARCH 1, 2010  
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**Council Present:** Dick Allendorf, Bob Ellingson, Amber Greves, James Hiller, Tony Wagner, Brad Wiersum, and Mayor Terry Schneider.

**Staff:** John Gunyou, Geralyn Barone, Julie Wischnack, Lee Gustafson, Mark Raquet, Desyl Peterson, David Maeda

**1. Off-sale liquor licensing**

Gunyou said for the past few years, each time a new liquor license approval has come before the council there has been a discussion about the number of licenses in the city. At the last council meeting there was a request to have a more in depth discussion about the city's liquor license policy. He said it was important to settle some of the debate about what way the city wants to go to provide more certainty for current license holders, new applicants, and staff.

Community Development Director Julie Wischnack gave the staff presentation.

Allendorf asked if there was more specific information about police calls to store locations categorized as "other." Wischnack said one example of what gets included in the "other" category is a car crash that occurs in front of a liquor store. Allendorf noted the number of calls to most stores was low but the number of calls to Haskells and the Bottle Shop was inflated due to those categorized as "other."

Greves noted that the data showing the relationship between the proximity of liquor stores and police calls could not include situations where a person buys alcohol at one location and travels to another area of the city where a crime occurs. Wischnack said what she was trying to show with the data was that there was not a direct connection between a liquor store location and neighborhood crime. She agreed that there was not data showing a connection between where a person lives and a specific crime occurrence.

Wiersum said when the city's taxes are discussed there are a group of like cities that are used for comparison. He noted the cities included in the data Wischnack presented did not include Edina, Eden Prairie and Lakeville because those cities have municipal liquor stores. He asked how their number of liquor stores per capita information compared with Minnetonka's. Wischnack said Eden Prairie has a population around 62,000 with three liquor stores; Edina has a population around 48,000 people with three liquor stores; Lakeville has a population around 54,000 with three liquor stores. Schneider said the information was relevant but there was a different dynamic involved for cities that have municipal liquor stores. There is exclusivity of being able to control where liquor is sold within the city but what is not taken into account is that residents shop outside the city limits to get lower priced liquor. He said the per capita information may not be meaningful

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because it is artificial and not set by competition. Wiersum said the same argument could be made for Sam's Club and Costco but the discussion was about the relevance of proximity and density. Greves suggested the issue Wiersum was identifying was what kind of city Minnetonka wanted to be.

Greves asked if there was more information about the history of the threshold of one liquor store per 5,000 residents established for statutorily defined first class cities. Wischnack said the threshold was established by the state legislature and she was not sure of the rationale behind the number. Wiersum asked who the statutorily defined first class cities were. City Attorney Desyl Peterson said the first class cities were Duluth, St. Paul, Minneapolis, and Rochester.

Wagner said the data presented clarified the relationship between the density of liquor stores and categories like crime, under aged drinking and economics. He said the current policy has served the city well over a period of time and he was not interested in seeking a solution for a problem that the city doesn't necessarily have. He will continue to support the liquor store in his ward to ensure it is successful.

Greves said the data was helpful but she noted that even though the number of alcohol citations for minors was down, it is also known that people under the age of 21 are finding smaller venues to obtain alcohol and they are finding people who are of legal age to buy them alcohol. There is no indication that even though the number of citations is down, the number of under aged people drinking has decreased. She said research shows there is a correlation between density and excessive alcohol use. It is also known there are adverse consequences with excessive consumption of alcohol. Research shows the greater the availability of alcohol is, the greater societal impact exists and the council had to decide if the goal should be to reduce those adverse consequences.

Hiller agreed that looking at the data from other cities indicated there was not information available about how the cities came up with their policies. His concern was that the city needs to provide a consistent message for any liquor business that wanted to locate in the city. The next liquor store that applies for a license would reduce the per capita rate to one store for every 3,900 residents. The types of liquor stores are also changing. He said he was concerned about not addressing the issue now and having to revisit it again in the near future.

Allendorf said he came out of the last council discussion on the issue thinking that if he were to support establishing a set number of liquor licenses he wanted the number to be based on some rationale rather than selecting a number just because the council has the authority to do so. He said the data did not seem to support setting the number of licenses. What would support setting the number of licenses is competition and the marketplace determining how many stores can stay in business in the city. He said he was not persuaded that it was the

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council's responsibility to make sure there was not too much competition for any retail establishment. The council's job is not to guarantee outcomes for retailers but rather the responsibility is to guarantee opportunities.

Wiersum said the data was inconclusive. He agreed it would be difficult to come up with the right number for the amount of liquor stores but that didn't mean the council shouldn't try. He said that in the 1950's cigarette companies said there was no clinical proof that smoking was bad for people's health. That did not mean cigarettes were not bad for people's health, it meant that there was no clinical proof. He said the U.S. Justice Department's report on drinking in America was interesting. Like most products, heavy users of alcohol consume most of the alcohol. He said the city is doing a good job addressing the issue of underage drinking but that does not mean there is not an alcohol problem in the city because there is an alcohol problem in every city in the country. Selling liquor is different from selling hamburgers and the council has the responsibility to manage the number of liquor licenses and determining if a license should be issued to an applicant. He said density and access impact problem drinkers. He agreed with Greves that the question was what kind of city Minnetonka wants to be. He noted the city requires onsale liquor establishments to sell more food than alcohol. That policy is an example of the council making a decision of what type of city Minnetonka wants to be. He said he cares about how the stores do in the city but he cares more about the public health of the community and he didn't think that more stores in the city was better.

Ellingson said he agreed with many of the points Wiersum made. He said it was a good development to allow new types of liquor stores in the city. His concern is allowing a liquor store with Cub Foods or Costco opening a store in the city and the impact to existing proprietors. He said there was an exception for alcohol as it relates to the free market and competition. Society wants more expensive alcohol to discourage consumption. Lowering the price of alcohol makes it easier for people to drink more. He noted in previous council discussion the city attorney indicated that it was legitimate for the council to consider the economic viability of the stores in the city while deciding if another license should be issued because stores that are not economically sustainable might try to cut corners to make money. He said he has never been interested in numerical standards because they are arbitrary but it might be appropriate to add to the policy consideration of proximity to other liquor stores.

Wagner said had the city limited the number of liquor stores to ten, and Pairings, the Wine Shop, and Trader Joes were not allowed in, the city would be worse off. It would be detrimental if the city, because there was a limit on the number of licenses, was not able to react to a changing marketplace that has more specialty type stores opening up. He agreed that liquor should be treated differently than other products because of the public safety requirements, but the data staff presented indicated there were not public safety problems in the city due to the

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number of liquor stores. He said he did not want to stifle innovation and competition and he wanted to make sure the city had unique offerings in the marketplace that draw people to the city to shop.

Allendorf noted there was an unfavorable preliminary vote when the Wine Shop liquor license was discussed. The council asked the community development director if there could be a limit on the sale of liquor and beer and a requirement that 85 percent of the sales be wine. The answer was yes that could be done and it would not create a burden on city staff. Allendorf said this defined the Wine Shop as a specialty shop and suggested the city look at defining niche areas or capping the number of general liquor stores. He noted the current applicant has claimed the proposed store would be a niche store.

Hiller said none of the studies attempted to classify the kinds of offsale liquor. He questioned if that data could be obtained. Gunyou said it would be difficult to structure a policy defining what a niche store was because the market is constantly changing.

Greves said each of the councilmembers ultimately had to decide what argument they were using to base their decision. None of the councilmembers are anti-business or free enterprise. For her, the niche argument was irrelevant because alcohol is alcohol. She said councilmembers had to decide if their decision was going to be based on the belief in free enterprise and the marketplace or if public health issues and the positive association between increased density of stores and an increase in excessive alcohol use was a bigger factor. The council has already stated the importance of the public health issue by adopting the social host ordinance and other measures. If the public health issues weigh out as the most important factor in making a decision, limiting the density is a step that could be taken to make an impact. She said she did not know the correct number of licenses but she was ready to decide on the number. She has not heard people in the community asking for more liquor stores. Wagner asked Greves if she had heard from people asking for fewer liquor stores because he had never gotten a call from a resident related to liquor stores. Greves noted the city has already taken a step with the social host ordinance acknowledging alcohol abuse was a problem in the community.

Wagner said the social host ordinance dealt with illegal activity and there was a difference between that and limiting the number of liquor stores in the city. Owning a liquor store is a legal enterprise. Greves said the social host ordinance was adopted to address underage drinking and limiting the number of stores would be another step. Wagner disagreed given the data.

Wiersum said lack of awareness does not mean a problem does not exist. He noted the city of Burnsville is changing its rules because of the opportunity to get a Costco in the city. He said if Costco wanted to locate in Minnetonka with a

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liquor store, residents likely would be supportive. The council had to ensure that there would not be unintended consequences if a policy was adopted.

Gunyou suggested focusing the discussion on if there was interest in changing the current policy and if so, what types of changes should be made.

Wiersum said he believed access to alcohol creates social ill. He wanted to avoid unintended consequences because putting a cap on the number might lead to a missed opportunity. He said he did not believe the community was underserved and his preference was to establish a cap of some type. He acknowledged the issue was in front of the council because of the application that has been submitted but he would not vote for a store called "Crazy Johnny's" because it sends the wrong message about drinking.

Schneider said he had a philosophical disagreement using the rationale saying that because somebody did a study somewhere showing a relationship between density of liquor stores and crime, that such a relationship exists everywhere. He said he could do a study taking data from Minneapolis and other parts of the country and show something similar to those studies. Minnetonka does not have that same type of relationship with problem areas in the city. He said the average resident buys a bottle of wine or a case of beer and the criteria of where to buy the alcohol is how far they had to drive and what the price was for the product. The resident is going to go where they feel comfortable going knowing the service and products that are available. A binge drinker will not shop at a niche store but will go to a place where they can buy as much alcohol for as cheap a price as possible. Limiting the number of stores would not stop binge drinking. Schneider said he had some sympathy for the economic argument. The areas in the city susceptible to that issue are the village centers where there is a limited geographic area that people are going to. On the other hand, the Ridgedale area has hundreds of thousands of people passing through the area. He did not see adequate justification for establishing an absolute cap because all that would do would be to set a barrier to creative operators that want to make the community more interesting. He said if the majority of the council did decide to change the policy he would like to see changes made that all the council could support in order to avoid the same discussions every time a new license was before the council. The justification was also important to prevent the city from getting sued for being arbitrary and capricious in the approval and denial of licenses.

Allendorf said that the solutions that have been suggested would not address the issues that were identified. Setting a radius would not stop liquor stores in areas that do not currently have liquor stores. A cap on the number would not get at the issue of problem drinking.

Wiersum agreed that there was no decision the council could make that would solve alcohol problems in the city. The issue is what the city stands for and what

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it aspires to be. He did not know what the right number of licenses was, but suggested following the state's limit for first class cities of one per 5,000 population. He would not support eliminating all stores in the city nor would he support opening a municipal liquor store to raise revenue. He said taking a stand against something that has negative societal implications was not a bad thing for a city government to do. He noted the city set limits on alcohol served at restaurants. Schneider said the limit for restaurants was different than what was being talked about for liquor stores since there was not a limit on the number of restaurants but rather was a ratio of food and alcohol sales. He questioned if the city could develop a policy that would allow niche stores and limit big warehouse type stores without being arbitrary. Wiersum said other cities set an arbitrary number.

Wagner noted currently outside the two regional centers in the city, there was one village center that has more than one liquor store. Putting a citywide cap on the number could impact being able to locate a store within a village center. Schneider said the city could establish different zones with different criteria for determining the number of licenses and where the stores could be located. Wischnack said currently there are five village centers that do not have a liquor store. Gunyou said the issue becomes even more complicated when the location of liquor stores in neighboring cities is included in the discussion. There is a regional market that has to be looked at when talking about density rather than just what was within the city's borders.

Greves asked if there was a number of liquor stores in the city that other councilmembers would decide should be the limit. Schneider said if the next four applicants were all proposing big box wholesale stores, he would find that to be a problem. If one of the stores was for a niche market, he would not have an issue with increasing the number of stores to 17. Allendorf concurred. Wischnack suggested looking at square footage of the store as a potential solution in changing the city's policy.

Hiller said the only logical immediate solution was to cap the number. Once there was an established cap, the other issues of the proximity of stores, niche stores, and the village centers could be addressed once the cap was established.

Schneider asked what the process would be if the cap was set at the current number of 12 and the applicant was denied, and then a unique concept store applied. Would the council have to adopt a change in the policy in order to approve the license? Peterson suggested the council adopt a policy that allows for that type of distinction. There was a court decision where a city decided it did not want to allow any more bars but did want restaurants that served alcohol. The court ruled that was not arbitrary. She said the city had to treat applicants that are equally situated, equally. Gunyou said the idea of a redevelopment area could apply to a special situation as well. Wiersum said there was clearly a

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difference between the 394 corridor area and the village centers. He said establishing some type of neighborhood zones had merit. Wischnack said there could be different criteria for village centers and the regional centers. Further criteria could be drafted to address a redevelopment situation. Allendorf asked what would have happened if that was in place when Trader Joes applied to locate in the city. Wischnack said Trader Joes would be in a regional center that would not have a cap but other criteria such as square footage or proximity to other stores would be considered. Wagner said that type of policy would have prevented the Wine Shop from opening in Minnetonka. Wischnack said that would presume the limit would be one store per village center. Wagner said the policy could be too complicated for an entrepreneur to figure out. Having unique stores could be appealing to people that might want to live in the city. He said whatever policy is put in place he wanted it to be flexible enough to allow unique niche stores. Peterson suggested not putting the policy in an ordinance to allow for greater flexibility. Policies can be changed more easily than ordinances.

Schneider asked that given there seemed to be a majority supporting a change to the policy, if a moratorium should be implemented until the policy was adopted. Peterson said the council had the ability to deny current applications for good reason. Placing a limit on the number of stores, or the need to study the issue further were good reasons for denial. The council has a great deal of authority in dealing with liquor licenses.

Wiersum said in previous discussions Schneider had referenced a time when liquor licenses were very restricted in the city and therefore were very valuable. This created a lot of problems. He said he sensed the city decided to address those problems by ensuring liquor licenses were worth the fee that was charged. He asked if a cap on the number was adopted if the city could potentially get into a similar situation. Gunyou said as long as there was a relief valve, that the council would consider other criteria to approve additional licenses, that situation would likely be defused. Peterson agreed with Gunyou but added with an absolute number of licenses there could be pressure on an existing owner in a situation where somebody comes in and tries to buy the existing license. Wiersum noted the license could not just be transferred but rather the council would still have to approve the new applicant. Schneider asked what basis could be used to deny the license in that situation. Peterson said a brand new license would be needed in that situation so it would have to go through the process. Wiersum said Peterson had told the council on numerous occasions that they had broad discretion on deciding on liquor licenses. Yet the council has not exercised its broad discretion.

Gunyou suggested that council consider a policy which set the current number of licenses as a baseline, and then allowed additional licenses based on the four criteria that had been discussed. One criteria would be for a niche type service; another exception would be for a store connected with a redevelopment area; the

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third would be for stores in an area like the 394 corridor; the final criteria would be for stores that are consistent with the objectives of the village centers. Peterson said she would suggest making it clear that even if an applicant fell under one of the four criteria, approval of the license was not automatic.

Wiersum said the niche idea was an interesting concept. Somebody could say that because they had pink carpeting, it was a niche store. He said he wanted to be careful that the policy sufficiently addressed the definition of niche. Gunyou said he was thinking that “niche” would address the question about whether the community would be better off by having that type of store because it was serving a specific market.

Greves said she favored a policy that was more black and white because if the policy was not clear, the council would continue to have the same discussion. She was willing to make it more of a flexible policy given the issues that had been raised but what Gunyou had suggested seemed too broad for her. She said if a hard number was established she believed the market would take care of the redevelopment areas.

Allendorf said if there was a hard cap on the number of stores then it was possible that an existing store would have to close if a store was needed in a redevelopment area. Flexibility was needed if a cap of any kind was adopted.

Wiersum said looking at the number of stores was clearly a decisive and emotional issue that involved a moving number because of the economy. He was fine establishing a moratorium to allow the staff and council to work on the policy and decide what it wanted to do.

Gunyou said to move the process forward he would suggest that staff come back with a proposed policy based on the evening’s discussion.

Schneider called a recess at 8:16 p.m.

He called the meeting back to order at 8:34 p.m.

**2. Advertising signs on benches**

Schneider said there are all types of issues that bubble up before reaching a critical mass. Bus benches are one such issue. Another is residential fire pits in the city. He receives calls from residents complaining they have to close their windows all summer because a neighbor has a fire pit. He said the council has to decide if these type issues are affecting the quality of life in Minnetonka and what should be done to resolve the issue.

City Engineer Lee Gustafson gave the staff presentation.

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Allendorf asked for clarification on the notification timeline. Gustafson said written notices would be sent out in three to four weeks. The time period is needed to allow staff time to contact businesses and to work with the city's communications manager to put together a public relations plan. Another notice will be sent out prior to July. Gunyou said staff wanted to provide enough advance notice to allow companies to work through their existing contacts and make other arrangements. Allendorf said when the city collected realtor signs there were numerous complaints and the city could see the same sort of activity.

Wiersum asked who owned the benches. Gustafson said the owner of most of the benches is US Bench. There is a secondary company who owns some of the benches and a third company has cropped up as well. Wiersum asked if staff knew how the companies sell the media space on the benches. He noted that typically companies buy four week periods for billboard space. He is concerned that there are contractual obligations that will go beyond July. Gustafson said staff chose July 14 because it was felt that date was far enough out. Staff would not have any issue extending the time out.

Wiersum said he would like to see the city's commercial areas look better. As nice as the community is, the commercial areas do not look as good as his vision of them would be. He said the primary visual issue is clutter. Getting rid of the bus benches would make the city look better.

Wagner said if the benches are removed for some of the routes, there will not be anywhere to sit. He suggested having a petition process that would allow residents to ask the city to install a bench at high ridership stops. Schneider said he shared the same concern. Having a bench available for transit riders is appropriate. He noted benches are not cheap and suggested giving US Bench some flexibility phasing out benches in critical areas and then have the company give the bench to the city to save money. The city would remove the advertising. Gunyou said staff could look into that option, but noted that many of the benches are not in good shape.

Hiller said if the benches are not in good shape he would prefer getting rid of them and asking the park board to look for alternatives.

Gunyou said a question would be included in this year's community survey about transit use and the use of benches.

Schneider said a project presented by an eagle scout at a recent council meeting was impressive and suggested that might be an option for designing something attractive.

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Allendorf said if the bus benches are used by transit riders, Metro Transit should be responsible for bench placement and they should also pay for and maintain the benches. Gustafson said when he worked for the city of Hopkins and benches were removed, Metro Transit was asked to pay for and maintain the remaining benches. Metro Transit said it did not have the resources. Gunyou noted the bus shelters owned by Metro Transit currently are not plowed.

Gustafson said it's likely the city will hear comments from riders right away but after a few months, the comments will go away. People don't want to sit on dirty benches.

Wiersum asked if the genesis of looking at the issue came from the city or from Hennepin County. Gustafson said city and county staff were involved.

Schneider said he agreed with Wiersum about learning more about the contractual arrangements. He would be fine if the timeframe for removal was extended.

**3. Adjournment**

The study session adjourned at 8:54 p.m.

Respectfully submitted,

David E. Maeda  
City Clerk