MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
MONDAY, NOVEMBER 18, 2013

1. Opening of Meeting

The meeting was convened by Liquor Commissioner Rogina at 4:30 p.m.

2. Roll Call

Members Present: Liquor Commissioner Rogina, Robert Gehm, Ald. Payleitner, Chuck Amenta, and Ald. Lewis

Absent:

Others Present: Chief Lamkin, Mark Koenen, Atty. John McGuirk, Bob Vann and Tina Nilles

3. Motion to accept and place on file minutes of the Liquor Control Commission for the Liquor Violation Hearing of the Filling Station held on October 14, 2013.

Motion by Ald. Lewis, second by Payleitner to approve minutes of the Liquor Violation Hearing of the Filling Station held on October 14, 2013.

Voice Vote: Ayes: Unanimous, Nays: None. Chrmn. Rogina did not vote as chair. **Motion carried.**

4. Motion to accept and place on file minutes of the Liquor Control Commission meeting held on October 21, 2013.

Motion by Mr. Amenta, second by Ald. Lewis to approve minutes of the October 21, 2013 Liquor Control Commission Meeting.

Voice Vote: Ayes: Unanimous, Nays: None. Chrmn. Rogina did not vote as chair. **Motion carried.**

5. Thirsty Fox Liquor Violation

Chrmn. Rogina: This a complaint of a violation being brought before the Liquor Control Commission to determine whether the St. Charles Local Liquor Control Commission, pursuant to this authority, shall revoke or suspend the local liquor license issued for The Thirsty Fox or impose a fine upon by reason the Complaint of Violation filed by the Police Department of an occurrence on or about October 18, 2013.

Motion by Mr. Gehm, second by Ald. Lewis to amend the time from 10:23 a.m. to 10:23 p.m.

Voice Vote: *Ayes: Unanimous, Nays: None. Chrmn. Rogina did not vote as chair.* ***Motion carried.***

According from the complaint, on or before October 18, 2013 at approximately10:23 p.m. the licensee, Big Ed's Entertainment Inc. (Thirsty Fox Pub), by and through its employees, officers and/or agents, committed the following offense in or upon the licensed premises at 104 E. Main Street, St. Charles, IL 60174 – that offense being served alcoholic liquor to two persons under the age of 21 years. Representation of Thirsty Fox is present and I ask that they come forward. I ask the question if you agree to the complaint and if you do, then in effect you are pleading guilty.

Samantha M. and Edward F. Stone 10 Hillview Court, Yorkville, IL: Yes, we plead guilty. Every day we are there 15/16 hours – seven days a week. In 15 years of owning a liquor license we have never been in trouble. It was 10:30 at night, it was a long day, Ed went upstairs to get the dog, and I went to the ladies room to replenish supplies. The Arcada show just let out and my doorman left the door to go cook something without informing the bartenders. When Ed came back downstairs he put the dog in the back and went to the front door and just that fast the police officer was already in there pulling the bartender out. It was a matter of 4 minutes.

Ed Stone: The show had just let out and everyone coming in to our place was 40/50 years old, but these two young ladies had already gotten into the bar in that quick time of the doorman not being there.

Chrmn. Rogina: You've stipulated to the complaint as printed and I appreciate your comments. Does anyone on the committee have any questions before we move to go into executive session?

Ald. Lewis: If someone had been at the door you're saying they would never have gotten in? Waitresses and bartenders don't card?

Samantha: It would never of happened. Not on the weekends. They do card but on the weekends and especially when there's a show going on they rely on the doorman because everyone comes in at the same time and they are all busy.

Chrmn. Rogina: Is it a policy of yours to card everyone?

Samantha: Yes, and we are sorry about this. We are very diligent on carding and we've changed our policy that when there is a show we have a second person just to sit at the door for the show.

Robert Gehm: So someone will always be at the door and not be asked to do something that takes them away from the door?

Samantha: Yes.

Motion by Robert Gehm, second by Chuck Amenta to go into executive session at 4:40 p.m.

Voice Vote: Ayes: unanimous; Nays: none. Chrmn. Rogina did not vote as chair. **Motion carried.**

Motion by Ald. Payleitner, second by Lewis to return from executive session at 4:53 p.m.

Voice Vote: Ayes: unanimous; Nays: none. Chrmn. Rogina did not vote as chair. **Motion carried.**

Chrmn. Rogina: Just to make a comment – underage drinking is serious and we certainly at the City don't like to see it and we appreciate you coming here today and admitted to what happened and that's a positive thing as well as we appreciate that you made some changes to your policy because of it. One point I would like to make that while you do have a door person checking IDs, redundancy is not necessarily bad and that means if someone has gotten to bar that has come through the door and there's even the slightest hint that this person might be underage, it's not inappropriate to ask a second time to see their ID. We noted that you admitted to the facts as stipulated to and I will take the punishment under advisement and you'll get a notice within 7 to 10 days.

6. Continued discussion on late night permit fees and motion to direct city staff to draft an ordinance to go before committee for recommendation.

Chrmn. Rogina: There are several things in this packet I want to draw your attention to. One is the hours of sale regarding New Year's Eve. This section reflects language that would go before City Council to consider – are there any questions?

All: No.

Chrmn. Rogina: 5.08.100 License Fees Established - this is a proposal of late night permits. The annual renewal fees B1, B2, B3, C1, C2, C3 licenses all reflect a base license of $1,200. That would be the license charge on an annual basis for these particular licenses. I would like to talk about the permits that a licensee might apply for either 1:00 a.m. or 2:00 a.m. Under this proposal that was discussed by Mark Koenen, Chief Lamkin, Tina, and myself is the following. If a licensee in any one of these categories apply for a base license of 12:00 midnight and they want a 1:00 a.m. permit, it gives them the right to be open an additional hour throughout the week. That additional cost would be another $800 for a total of $2,000 for the license and permit. If the licensee wanted to apply for a 2:00 a.m. permit to stay open 2 hours beyond the based midnight time, then they would be charged an additional $2,300 bringing the total to $3,500. Before we get into the recreation of any types of ordinances I would like to have a conversation with anyone here who has any thoughts on these numbers.

Chuck: I don't think it's unfair to ask the owners of 2:00 a.m. permits to share in some of the extra costs that may be incurred by the City for police enforcement or other city resources that could be used. I don't have a problem with the costs of the permits.

Ald. Lewis: Where will that money go – into a General Fund or will it be earmarked for something?

Mark Koenen: It would go into the City Corporate Fund.

Ald. Lewis: If we are thinking that we need this extra revenue because there are extra problems when they stay open that late, is that something we could earmark for extra costs?

Mark: We could but I don't think we should plan on that as a revenue stream. The message is if you want to be open past midnight, it is going to cost you some money and the rate structure begins to suggest the later you're open the more the rate structure is.

Ald. Lewis: I'm not thinking it would be, but all we've heard is nothing goods happen after midnight and if there are more problems on the street?

Chrmn. Rogina: When I was alderman and it came before City Council that we move the time back to 1:00 a.m. and then we had a conversation with the Tavern Association and we backed off on that. From my seat and receiving input, some things are good and there are still incidences of problems after the 1:00 a.m. hour. From my perspective only as Liquor Commissioner, the numbers reflect that if you want to stay open to 2:00 a.m. it is going to cost you. It's a privilege and I don't have a problem stating this. The City Council can change these numbers to whatever they want to. These are just numbers to get the discussion started.

Ald. Payleitner: Clearly they are not arbitrary. Did they come from somewhere? I recall we were using a Naperville comparison.

Chrmn. Rogina: They don't fall into Naperville's comparison as far as late night permits are concerned because their numbers are considerably less. The key piece to this proposal is someone who currently holds a 2:00 a.m. license pays $2,600 a year in total. Should they choose to reduce their time from 2:00 to 1:00 a.m. they're saving $600. Should they decide to retain the 2:00 a.m. they are paying an extra $900 a year. We are soliciting feedback from this commission to pass along to Council Committee on December 2. We are just an advisory body.

Ald. Lewis: And this includes the one time New Year's Eve?

Chrmn. Rogina: That's built in as part of the whole package that we'll present to City Council in December. I would also say before the Council meets in December, all pertinent ordinance changes relevant to Council review, that on an annual basis the City Council will review every license looking at the track record of every licensee with the opportunity to say they are not going to give someone a 2:00 a.m. permit this next year. We will set it back to 1:00 a.m. or midnight. Council can review that based on the activity of that particular licensee. Also for liquor licensees, when that is posted for reviewed by Council Committee, we will certainly entertain input from licensees here prior to the Council Committee voting. Once everything is done and all ordinances are put in place, sometime before the beginning of this New Year, the City Administrator and I plan on calling every licensee into this chamber for a meeting to go

over all of this. We are trying to be transparent and fair, seek public input as well as licensee once it goes to Council committee.

Mark: For clarification, I heard you say City Council will review all liquor license requests for renewal or is it they'll review all late night permits for renewal.

Chrmn. Rogina: It will be for late night permits for the purpose of if you are applying for a 2:00 a.m. for the following year, it is either granted or not granted based upon some criteria that's in the ordinance. This is not for the license itself, it is for the permit.

My thanks go out to Chief Lamkin, Mark Koenen, and Tina in their help in shaping this up.

7. Other Business

a. Discussion for Roof Top Patio for Alibi Bar & Grill located at 12 N 3rd Street, St. Charles.

Chrmn. Rogina: Rich Simpson, owner of the Alibi Bar & Grill, is asking for a recommendation from the commission to go to committee to ask permission to have a roof top patio at his place of business located at 12 N 3rd Street. He has met with other city departments at a Pre-App meeting on August 29, 2013 that included Building & Code Enforcement Division, Development Engineering Division, Fire Department, Electric Division, and Police Department. He is requesting approval to go forward on the next steps to seek final approval from the City Council.

This advisory body is here tonight to provide feedback to Mr. Simpson. The City Council certainly has a right to make a decision on this matter at committee and City Council sometime in the future. The order of business will be as follows: Mr. Simpson will come to the podium and talk about his proposal. When that is done members of this commission may ask any questions or comments and give any feedback that they would like to have on the record.

Rich Simpson, 236 E Vallette, Elmhurst, IL: The reason for my request to have a roof top is my building sits upon lot line to lot line; so I don't have nowhere to go with this building as far as having outside seating. Patrons come and ask for outside seating all the time and from a restaurant's aspect of serving food we suffer very much for lack of not having any outside seating and they go to some other establishment. So the only alternative I have is to go up and I'm looking to put a roof top on to satisfy this condition and serve more food.

Chrmn. Rogina: In this packet we have a drawing that Mr. Simpson provided, minutes from the Pre-App meeting conducted on 8/29/13, and Mr. Simpson's request, and a copy of some of the fight activity at the Alibi from June 1 – November 11, 2013.

Robert: Regarding the competitive nature of being able to serve outside, would there also be liquor sold upstairs on the roof top? With the rendering of the drawing, just safety wise how is it going to be so people don't fall off the building.

Rich Simpson: Yes alcohol will be sold and the seating will be set back and built according to the architectural structural engineers and fire code. All that will be resolved.

Ald. Payleitner: In your opening remarks you said it was to increase business for your food service. Does that mean that if you're not getting food you're not getting upstairs?

Rich: No I want to increase it for them to go upstairs to increase my sales overall, but primarily to increase my food sales because that's where we are suffering right now.

Ald. Payleitner: I have two concerns. One is the lack of assurance of the business plan disclosures you made in the past that haven't come to fruition, so I'm still at a building trust phase for the Alibi because what you presented when you were opening is not what opened.

Rich: I was badgered by the City to do certain things. We were saying things and everyone was jumping on me and forcing different conditions so things changed because of the way things were being portrayed.

Chrmn. Rogina: You were badgered by the City? The City went along and gave you the benefit of the doubt, at least a couple of times in my mind.

Rich: We changed the game plan because everyone wanted to see things done differently and were trying to push us into saying we got to do this or that. It wasn't that anything was dishonest in trying to put this together; it's just things were changing based on all the feedback we were getting.

Ald. Payleitner: I saw just the opposite. I saw things decrease, not increase; meaning we were expecting a white table cloth restaurant and we got a bar. Secondly your establishment has already proven a dangerous environment. In five months times any of those incidents could prove fatal if they happened on the roof. I'm not talking long term history – since June there have been 10 incidences that would have proven really dangerous had they happened on a roof. I see you as a proven dangerous impairment and I am hesitant in granting this.

Rich: I don't know what incidences you are looking at.

Ald. Lewis: I went back and read the minutes from a couple of years ago. I thought we talked restrictions of how many people your place could hold. You have capacity for over 400 people but you have a liquor license that restricts you to have approximately 280 people in your establishment at any one time and that includes your work staff. So if you have this roof top garden you aren't going to have any more people so you are not going to be able to increase your business to 500 people.

Rich: I'm not trying to increase the business; I'm looking to get more people in during off times so I can give them dinner and stay busy at all times.

Ald. Lewis: And when you reach that limit you'll tell them to leave?

Rich: Do you really think I'll have that many people?

Chrmn. Rogina: Hypothetically Ald. Lewis is asking is if you had 270 some people in your establishment would you close off the upstairs because you are at capacity or the alternative would be you never be above 279 total with the roof top and inside headcount.

Rich: If my capacity would get extended I would be coming back before the City Council asking for an increase.

Ald. Lewis: I think I would have to be in agreement with Ald. Payleitner and you certainly can go before City Council, but I think it would be a futile attempt.

Chuck: Would this be a change or addendum to a liquor license for an outdoor patio space.

Tina: A liquor license for each establishment is for their entire establishment whether they have it outside on a patio or not. It's one liquor license per establishment.

Chuck: So this is going to be an issue more for City Council whether they approve it or not. My questions fall in line with what everyone else's questions and have been answered.

Chrmn. Rogina: My first question is about sound. You're in a residential neighborhood and if you go upstairs you are considering having speakers on the roof for some kind of music. Sound will travel and be more problematic to the neighbors. I also read that you are not looking for a service bar upstairs, so it's my understanding that the wait staff will be carrying liquor upstairs? Mr. Vann do you have any comments on this?

Bob Vann: This is not unusual. There are establishments outside of the City that do this.

Chrmn. Rogina: Sometimes is very difficult to issue a citation for the various incidents that do happen downtown. It's hard to prove that it was this particular licensee that was the source of the problem; and for us as a City to go through that process is problematic with the cost involve particularly if we lose or if the licensee wants an appeal. Having said that, if you're a licensee in this community and whether it's a battery, drunkenness, or fights it's happening on the licensee's property which tells me something is amiss. As Liquor Commissioner I would like to see more letters go out to licensees when an incident takes place on their property whether or not they are cited or not. You have a special obligation to our community to see that these kinds of situations do not happen on your property. I don't want to hear it's not my fight – it's not my fault. I'm not saying it is – it happened on your property. The community has told me as an alderman and now as Mayor that we don't want this kind of activity downtown. We want a good fun environment and a downtown where people don't have to feel unsafe. I'm not holding you personally responsible; I'm saying this bothers me and I want the record to reflect that. I feel you received the feedback you wanted and you are certainly welcome to go forward to Council Committee and make your proposal knowing that, in my opinion, the rest of my colleagues will be asking some of the same questions.

Rich: On these ten incidences, I have never been informed of them.

Chrmn. Rogina: The police do not published these things without a call going out to your establishment. So whether you were personally there or not, perhaps you won't told about them. These incidences took place on your property. You weren't charge with anything.

Rich: I don't believe these incidences happened on my property. They may have happened outside but did not happen inside my place.

Chrmn. Rogina: They fall under the domain of the Alibi.

Chief Lamkin: This comes right out of our record system. I would point out the times on these incidences. Nine out of the eleven are pretty late at night. A concern the police department has and we talked a little about the business plan for the restaurant, I haven't heard anything about a business plan operation for the roof top. We talked about encouraging people to have dinner, but my question for all of you to consider is how many people are going to be eating dinner on the roof top after midnight. The other concern I have is the adjacencies to the surrounding properties including Carroll Tower and what is the plan to mitigate the noise once we start getting noise in the summer time. We are well aware of the activities downtown. It's one thing about the other places that have grade level outside but we're talking about 15-20 feet up in the air and that sound is going to carry. Those are concerns from the police department standpoint and number one we don't want people getting rowdy on a roof top. We have to think of the safety in the neighborhood surrounding this going into it, and if we don't have a plan to mitigate the problem once it starts, what are we to do with it then; like many things we're expected to see if we can fix it. After he has put a significant investment into the place I understand that part that goes with it, but those things need to be addressed before he puts an investment into it so that we know what the plan will be in an event that some of these things occur.

Chrmn. Rogina: Rich if I can say one more thing that doesn't have anything to do with you or your establishment personally and it speaks to the point of not being informed. The press reports it, we receive this incidences of fights, DUIs, public intoxication, etc. I have a broader base question, does our licensees in the aggregate particularly those that want to stay open until 2:00 a.m.; when in the aggregate are they going to come to the City Council and the Mayor and say we're in this with you to provide a fun area, an entertaining downtown; not one that on every weekend you read one, two or more incidences of fights, etc. etc. That's just a rhetorical question I pose as a member of that group of licensees to think about moving forward. I'm here as a leader in this community along with the City Council to say we want a vibrant downtown.

8. Executive Session – None

9. Adjournment

Motion to adjourn by Mr. Gehm, second by Payleitner at 5:33 p.m.

Voice Vote: Unanimous; Nays: none. Chrmn. Rogina did not vote as Chairman. **Motion carried.**