

**MINUTES
CITY OF ST. CHARLES, IL
SPECIAL LIQUOR CONTROL COMMISSION MEETING
MONDAY, FEBRUARY 6, 2017**

1. Call to Order.

The meeting was convened by Liquor Commissioner Rogina at 4:32 p.m.

2. Roll Call

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

Absent:

Others Present: Mark Koenen, Atty. John McGuirk, Police Chief Keegan, Deputy Police Chief Kintz, and Tina Nilles

3. Motion to accept and place on file minutes of the Liquor Control Commission meetings held on December 19, 2016.

Motion by Ald. Payleitner second by Lewis to accept and place on file minutes of the Liquor Control Commission meeting held on December 19, 2016.

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

4. Recommendation to approve a proposal for a Class E-1 liquor license for St. Charles Breakfast Rotary Club to be held at Lincoln Park, St. Charles on June 24, 2017 from 12:00 noon to 5:00 p.m.

Chief Keegan: Curt Barrett is here tonight from the Breakfast Rotary Club. This is their second annual event and they are a not-for-profit group requesting an E-1 license. As in last year's proposal Brew Avenue Events will be the back end sponsor who puts this event together. It went very smooth last year. The Park District is holding off on their approval until the Liquor Commission acts on approval.

Curt Barrett, 218 Illinois Avenue, St. Charles, Event Coordinator for the Breakfast Rotary Club: Several members of this club are here tonight and we're working with Brew Avenue Events who have the expertise of the logistical side of getting the different brewers lined up. We are taking the same approach as last year for a very successful event. We are looking to grow this event gradually. We had a wall of tents spread out in a semi-circle so there was a nice flow to the event. We got a lot of complements. We have a master map that gives more detail, we

have the hanging lanyards that say how many 3 ounce sample a person gets via a punch on the card.

Bob Gehm: No questions just good to see you trying it again and be successful again. Also in growing it gradually and knowing the space at Lincoln Park may limit you a little bit.

Ald. Payleitner: Ready to approve.

Ald. Lewis: How many people did you end having last year?

Mr. Barrett: We bought 1,000 trial glasses and we had three left. Our paid count was about 960.

Ald. Lewis: How much space does that park hold? How many people can be put in there at one time?

Mr. Barrett: Park District told us that for Thursday Park Concerts they'll get 3,000 to 4,000 people there. And we have other options of other parks if we were to grow too big.

Ald. Lewis: Last year there was some concern about the playground. Is that the same that it's not going to be part of your festival?

Mr. Barrett: It's easier for us to fence off the entire park and this year we already presented before the Park District Board and they agreed for us to be able to close it off since there wasn't much use of it.

Ald. Lewis: Did you have amplification last year?

Mr. Barrett: Yes we do have a DJ for background music and for public announcements in the center of the park.

Ald. Lewis: Is there a rain date if it's pouring down rain?

Mr. Barrett: Last year we got into the 90's and thankfully we had a lot of tree cover, but the majority of our ticket sales are ahead of time; so it's rain or shine.

Chuck Amenta: No questions.

Motion by Ald. Payleitner, second by Mr. Amenta to recommend approval of a proposal for a Class E-1 liquor license for St. Charles Breakfast Rotary Club to be held at Lincoln Park, St. Charles on June 24, 2017 from 12:00 noon to 5:00 p.m. to go before the February 6, 2017 Government Operations Committee.

Roll Call: Ayes: Gehm, Payleitner, Lewis, Amenta; Nays: None. Chrmn. Rogina did not vote as Chair. **Motion Carried.**

5. Discussion regarding Massage Establishment Citation and Hearing Notice for Shangri-La Massage & Spa, 2015 Dean Street, St. Charles.

Chrmn. Rogina: This is a complaint of violations 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 massage establishment license or impose a fine upon by reason of the Complaint of Violation filed by the Police Department of multiple offenses happening on a or about January 11, 2017 at the establishment of Shangri-La Massage & Spa, 2015 Dean Street, Ste. 7A, St. Charles.

Now comes the Petitioner, James Keegan, Chief of Police of the City of St. Charles, Illinois and files this complaint before the Local Liquor Control Commission of the City of St. Charles, Illinois, and states as follows:

1. The Petitioner is the duly appointed Chief of Police of the City of St. Charles and as such is charged with the duty of enforcing the laws of the State of Illinois and the ordinances of the City of St. Charles.
2. That on or about January 11, 2017, at approximately 7:41 p.m., the Licensee, Shangri-La Massage & Spa, by and through its employees, officers and/or agents, committed the following violations of the St. Charles Massage Establishment Code:

OFFENSES

Violated Section 5.20.130(G) of the Massage Establishment Code which states:
“No person, knowingly, in a massage establishment, shall place his or her hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage, a sexual or genital area of another person.”

Violated Section 5.20.130(H) of the Massage Establishment Code which states:
“No massage therapist or employee shall perform or offer or agree to perform any act, whether or not for compensation of any form, which would require the touching of the patron’s sexual or genital area.”

Violated Section 5.20.180(B)(10) of the Massage Establishment Code which states:

“The license holder permits acts of prostitution or solicitations for acts of prostitution to be performed within the premises ...”

Violated Section 5.20.110(A) of the Massage Establishment Code which states:

“Supervision. A licensee of a licensed massage establishment shall have the premises supervised at all times when open for business. Any business rendering massage services shall have at least one person who is a licensed massage therapist on the premises at all times while the establishment is open. The licensee shall personally supervise the business, or shall delegate such supervisory responsibility to a manager whose name is listed on the massage business license and shall not violate, or permit others to violate,

any applicable provisions of the chapter. The violation of any provision of this chapter by any agent or employee of the licensee shall constitute a violation by the licensee.”

Violated Section 5.20.130(E) of the Massage Establishment Code which states:

“A patron’s sexual and genital areas, as defined herein, must be covered by towels, cloths or similar nontransparent garments, including undergarments, when in the presence of a massage therapist or employee.”

Violated Section 5.20.130(F) of the Massage Establishment Code which states:

“No person, knowingly, in a massage establishment, shall expose or fail to conceal his or her sexual and genital parts, or any portion thereof, to any other person. It shall also be unlawful for any person, knowingly, in a massage establishment, to expose the sexual or genital parts, or any portion thereof, of any other person.”

3. On or about January 17, 2017, at approximately 9:35 p.m., the Licensee, Shangri-La Massage & Spa, by and through its employees, officers and/or agents committed the following violation:

Violated Section 5.20.110(A) of the Massage Establishment Code which states:

“Supervision. A licensee of a licensed massage establishment shall have the premises supervised at all times when open for business. Any business rendering massage services shall have at least one person who is a licensed massage therapist on the premises at all times while the establishment is open. The licensee shall personally supervise the business, or shall delegate such supervisory responsibility to a manager whose name is listed on the massage business license and shall not violate, or permit others to violate, any applicable provisions of the chapter. The violation of any provision of this chapter by any agent or employee of the licensee shall constitute a violation by the licensee.”

4. On or about January 11, 2017 and January 17, 2017, Shangri-La Massage & Spa was operating under a Massage License issued by the City of St. Charles.
5. That the acts detailed in Section 2 and Section 3 of this Complaint of Violation each are prohibited and are in violation of and contrary to Sections 5.20.130(G), 5.20.130(H), 5.20.180(B)(10), 5.20.130(E), 5.20.130(F) and 5.20.110(A) of the St. Charles Municipal Code.

6. That the Licensee, Shangri-La Massage & Spa, is responsible for the acts of its employees, officers and agents and is required to ensure that no violations of state law or ordinances of the City of St. Charles take place on said premises.

Wherefore, the Petitioner, James Keegan, Chief of Police requests pursuant to Section 5.20.150 of the St. Charles Municipal Code that the Local Liquor Control Commission, a/k/a the Massage Business Commission, hold a hearing on this matter and take such action against Shangri-La Massage & Spa as the Massage Business Commissioner shall deem appropriate under the circumstances.

Atty. James Hyun of Hyun Law Group representing Shangri-La Massage & Spa.

Chrmn. Rogina: As part of the packet that was served on Shangri-La; in there was a sheet that asked for a plea. You did not submit that so obviously “plead guilty and do not request a hearing” is off the board and the other two are “plead guilty and request a mitigation hearing” or “not guilty and request a hearing”. What are you requesting?

Atty. Hyun: My client contacted our office a couple of weeks ago with the complaint and notice and I did my due diligence and contacted Mr. John McGuirk and we had a conversation a couple of times regarding the procedures because this is the first time I’m here in St. Charles even though I’ve been an attorney for 28 years, I’ve done quite a few administrative hearings and I noticed that not all administrative hearings are created equal and all have different procedures.

I spoke with my client about the nature and terms and conditions of this complaint, and I can tell by the body language of my client that she is extremely embarrass about this and I did discuss with Mr. McGuirk there may be some technical legal issue, but the last thing my client wants in this particular complaint is to seek an adversary hearing on this matter. What I plan to do, if it is admissible, is to submit a mitigation packet within the next two weeks and have a hearing. My posture today if you’re asking what we want to do today, I was hoping to have some kind of a pre-trial conference if that is allowed in this court of St. Charles. Ideally that is what I would like to do is to put this case in the life of the owner as to what happened from her perspective and what she did subsequently after this incident to mitigate and help any concern that the community may have. But if the Board here cannot accommodate a pre-trial conference because it’s not customary policy of St. Charles; and our only option here is to plead guilty and request a mitigation hearing and that is what I certainly will do.

Since my client is here she would like to enter a plea of guilty and I could submit a mitigation package and get it over prior to the hearing so you would have time to review it and then we could set a date. That was the posture that I had today.

Chrmn. Rogina: I have no problem asking my colleagues up here to comment individually if they so desire on your request. The essence of what you have said here today is you are kind of suggesting a plea bargain. If we have a pre-trial conference we’ll discuss the issue but at the same time you said my client wants to plead guilty. I’ve read all these charges and either we admit to the charges or we want to do a process hearing to get to that. That’s what our custom

has been here in every case that comes here whether it be massage, liquor, or tobacco violation. Given the fact that this happened on January 11, 2017 and today is almost a month later; I respectfully suggest to ask you to either plead guilty and mitigate or plead guilty and request a hearing. Those are the two options available, but in the interest of fairness I will go to the Commission here.

Robert Gehm: Timing wise it has been out there for almost a month and there is no arraignment form of intention in how they want to move forward. This is the first time we're hearing about it, so I'm not sure how we would balance all that right now. Normally we get that form and they're ready to present mitigation.

Ald. Payleitner: I'm confused to the exact charges. We're not seeing the criminal charges, we're just seeing the violation of the license here?

Chrmn. Rogina: Correct and the word guilty might be a strong word, but liable is fine of a violation or not a violation of the ordinance would be appropriate.

Atty. Hyun: I don't want to deviate away from what is customary of the usual practice of St. Charles – I was not suggesting that. I want to stay within the confines of what is customary and allowed in St. Charles. The reason why I'm requesting this is because I wasn't sure about the procedure. I've been an attorney for 28 years and have done administrative work in Cook County. I've done many types of offenses in many different villages and they all have different terminology and they all start out by sending notices asking for informal conferences, then when the case is not settled it goes up to the hearing court.

Ald. Lewis: We don't do it that way that he is suggesting here in St. Charles. I think we move forward with our options.

Chuck Amenta: At this point we haven't had a precedence to do a pre-trial hearing. I'm not sure it's the right direction to move at this point. If something happens in January and doesn't get heard until December, it keeps getting pushed out.

Chrmn. Rogina: I think we are going to stick to our rules and regulations which suggest they are liable that they broke the offenses of the City of St. Charles ordinance or we didn't and they request a hearing.

Atty. Hyun: We will enter a plea of guilty and request a hearing of mitigation.

Chrmn. Rogina: That hearing would be right now because the form that was submitted is clear on that subject. It says to check one of these boxes and in this particular case you would check guilty and come here today to argue in favor of your client.

Atty. Hyun: If that's the case your Honor, I will have my client sign this form of guilty and will do the mitigation here today.

Chrmn. Rogina: I read the offenses here and if you're saying that they did happen, my question to you would be to argue as to why we should not administered one of the possible punishments that go along with the offenses in question.

Atty. Hyun: I spoke with Ms. Jiang about this matter and she was sick to her stomach when this happened. She called me and said there was woman employee that worked there that she believed to be of prostitution. Ms. Jiang was not at the business establishment. She was at home and had a personal commitment with her son. This happened in the evening hours and the manager was supposed to be at the premises but was not there due to other extraneous circumstances. The manager left an hour earlier than she was supposed to. There is a manager there all the time and I have list of three managers with contact numbers. The fact on that particular night the manager was not there when the police officer arrived is not really a direct intent to breach the requirements as laid out for the business. This was an innocent mistake for the manager. The owner received a call from an employee the next day after he assisted this employee in bonding out because of this incident. First thing Ms. Jiang did was terminate her. There were no three strikes you're out – this was a zero tolerance although there is a technicality of whether this person was an employee but she was working there.

Chrmn. Rogina: You used the word technical of may or may not been technically employed, would you consider her being an agent?

Atty. Hyun: I would say so. At this point I don't want to be technical, the answer is a guilty plea, I was just using a pragmatic approach here. The other thing she has done, I have been to her establishment and was shocked at the size and how immaculate the place was. They spent several hundreds of thousands of dollar on the remodel of this place. I've checked the reviews of this parlor on the internet and the reviews were outstanding on how immaculate it was and in terms of quality it was exceptional.

From the perspective of Ms. Jiang, she has taken all steps as coming here as an immigrant with a family and wanted to make her business successful. She raised money over 2-1/2 years to buy this commercial unit and raise her family in St. Charles. Her original intent was to build a reputable place in St. Charles and not get involve with some bad intent of violation of the law. She has spent hours of resources each day. In addition because she knew of the problem that other people had she made it a point every single morning with every employee and manager to tell them what was appropriate and not appropriate in the business. Because not all employees are good in the English language, she translated her business rules/policies in Chinese to make sure they understand what is expected and they have to sign it. (Read through the extensive lists of rules.) She also has a surveillance camera throughout the spa to make sure the customers are safe and there is nothing happening in violation of the law with the exception of having a camera in the massage parlor rooms. She has taken every step necessary to make her business safe and be in compliance with the law. This incidence obviously doesn't help the reputation of this massage parlor, but I want to keep the perspective of her that she has done everything necessary. She had an employee/agent, call it a bad apple, that decided to do this inappropriate behavior. What could she have done to prevent something like this? Every employee has a massage license and she makes sure they have no background, and they have experience. What happens

behind closed doors which is a massage rule, how could she possibly be in control of that? The company should be penalized but to shut the business down upright would not be pragmatic and would be unfair. From the perspective of the owner and her husband this is an isolated incident, there is no pattern here. This plan for her to open this business was in the making for years and I believe her co-investment is over \$750K.

I've talked to her to see if there are some questions she doesn't know legally because I notice with a lot of the Asian clients that I have, they have a habit of just signing a document whereas the Americans in this country like to consult with an attorney before signing any documents. I've asked her how business is going and she said it's slow but it's getting better. Except for this incident that she couldn't control, she has been very compliant with the City of St. Charles and supportive to many of the organizations, such police and fire compliance checks, Chamber of Commerce, etc. because she wants to be a model business citizen to the City. If there was intent for her to do anything like this, she should be punished. But the fact of the matter is she had no idea. One strike she shouldn't be out and this is a strike against her based on the agent's action that is unfortunately tied to the owner. This was not an intent on her part to do anything that was in violation of the law.

The legal precedence that I've research on is revocation and is definitely the most harsh. There are other things such as closure for a few days, a violation fine, or maybe they should have some classes to reassure them that these types of actions are not allowed. But to deprive them after all of their efforts to shut them down would really be cruel and unusual punishment. I wasn't prepare to have copies of everything I have here tonight but can have copies made for you.

Chrmn. Rogina: Your 28 years of experience has certainly risen to the occasion because while you said perhaps you want a mitigation hearing in a couple of weeks, I think you presented that in a very professional manner.

Ald. Payleitner: This situation saddens me as clearly your client is heartbroken. You asked a number of times what could she have done to prevent this? We went to great lengths in sweating out this ordinance and one of the parts of this ordinance has built-in protection against this and that is, which is one of the violations that the Mayor read, was a registered manager needs to be on the premises at all times and that wasn't the case and that was a clear violation of the ordinance. That was written to protect the business, the owners, the clients, so that's a huge violation in my eyes. Secondly, you spoke that the language was an issue but when the owners came before us to get their license, every time I asked Chief Keegan is the language going to be an issue? Do they understand our ordinance and it was assured at that time that they understand the full content of the ordinance. We see the ramifications of that violation of the ordinance.

Chuck: The license to the City of St. Charles shows one manager, is that correct?

Atty. Hyun: Lifa Jiang is listed as the main manager on the license. There are two other managers listed and Zoe is here and is a manager.

Chuck: And is she listed on the City license as a manager?

Atty. Hyun: She started in January 9, 2017.

Ald. Lewis: I agree with Ald. Payleitner when you kept asking what could she have done? She could of locked the door – closed; if there was no manager there they could of left.

Atty. Hyun: The manager at the time this incident occurred was Li Xing and she worked in the morning. We agreed there was no manager there, we're not denying that at all.

Ald. Lewis: I have a police report that says there is only one manager listed and you're telling me you have three.

Atty. Hyun: I agree that Lifa Jiang is listed under the City as the manager, but apparently because of lack of sophistication obviously when there is a change in the business structure, she has to amend it and let the village know. We agree with that.

Robert Gehm: The person in the incident, how long have them been an employee/agent of the Shangri-La up until now.

Atty. Hyun: She started in October.

Robert: The exposure to the work rules that were written and explained were pretty extensive and is part of those work rules also knowing what the city ordinance is about managers being on duty. Are all of those included in the work rules so that every employee, manager is aware of what the city ordinance is to operate that massage business?

Atty. Hyun: Yes.

Chrmn. Rogina: As counsel for the Shangri-La, do you agree that the licensee is responsible for the acts of its employees, officers, and agents and required to ensure that no violation of state law or ordinance of the City of St. Charles takes place on the premises?

Atty. Hyun: Absolutely.

Chrmn. Rogina: The law is clear that the owner/licensee does take responsibility for those actions even in the absence of knowledge under a respondent superior.

Atty. Hyun: It's a street liability type of affect. Based on my legal understanding is that absolutely Shangri-La Massage & Spa is liable for this act.

Chrmn. Rogina: A decision will not be made today. I have 7-10 days to issue a ruling and submit that ruling to Shangri-La and that's what will happen. We'll now go into Executive Session to discuss further and come back to you within 7-10 with a decision.

Atty. Hyun: I will have Ms. Jiang sign this arraignment form for your records.

7. Other Business

8. Public Comment

Motion by Mr. Amenta, second by Gehm to move into Executive Session to discuss massage violations at 5:23 p.m.

Roll Call: Ayes: Gehm, Payleitner, Lewis, Amenta; Nays: None. Chrmn. Rogina did not vote as Chair. **Motion Carried.**

9. Executive Session (5 ILCS 120/2 (c)(4)).

Motion by Mr. Gehm, second by Amenta to return out of executive session at 5:43 p.m.

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

10. Adjournment

Motion to adjourn by Mr. Gehm, second by Amenta to adjourn meeting at 5:44 p.m.

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