

**MINUTES  
CITY OF ST. CHARLES  
GOVERNMENT OPERATIONS COMMITTEE  
MONDAY, DECEMBER 17, 2018**

**1. Call to Order**

**2. Roll Call**

**3. Omnibus Vote**

Items with an asterisk (\*) are considered to be routine matters and will be enacted by one motion. There will be no separate discussion on these items unless a council member/citizen so requests, in which event the item will be removed from the consent agenda and considered in normal sequence on the agenda.

**4. Police Department**

**a. Recommendation to Approve a Class E-2 Temporary Liquor License for a Special Event, “St. Patrick’s on the Plaza” to be held on March 17, 2019 at 1<sup>st</sup> Street Plaza.**

Chief Keegan explained that McNally’s will be hosting an event “St. Patrick’s on the Plaza” on March 17, 2019 from noon – 8:00 pm. The event is similar to Unwind Wednesday the only difference being that McNally’s hosts this event alone. This event was held last year with no issues. The area is cordoned off to make sure there is no underage consumption and that no liquor travels outside the specified area. Everyone is credentialed and asked for identification. Chief Keegan recommend in favor of the event. It was noted that there will be live music from 2:00 pm – 5:00 pm, weather permitting, if not it will be held inside.

Motion by Ald. Stellato second by Ald. Vitek to recommend approval of a Class E-2 Temporary Liquor License for a Special Event, “St. Patrick’s on the Plaza” to be held on March 17, 2019 at 1<sup>st</sup> Street Plaza.

**Voice Vote:** Ayes: Unanimous; Nays: None. Chairman Bancroft did not vote as Chair.

**Motion Carried**

**b. Recommendation to approve a proposal for a class F2 license for SIP Parties, LLC, located at 1 W Illinois Street, Suite 110, St. Charles.**

Chief Keegan noted that this item advanced from the Liquor Control Commission meeting earlier in the evening and passed with a vote of 4 – 0. Originally the petitioners were looking at a building on N 17<sup>th</sup> Street, however there was a problem with the PUD and alcohol consumption. Because of this you may see some references the Foundry Business Park in their information. They have signed a lease and will be relocating to the former Painted Vine in Fox Island Square. This is a BYOB license.

Ald. Turner asked if they will be hosting private parties. Christopher Harmon (1 W Illinois Street) indicated that they will do private parties and will have sign up on their website for events as well. The painting sessions are 2 – 3 hours and customers bring their own wine or beer.

Motion by Ald. Stellato, Second by Ald. Gaugel to recommend the approval of a proposal for a class F2 license for SIP Parties, LLC, located at 1 W Illinois Street, Suite 110, St. Charles.

**Voice Vote:** Ayes: Unanimous; Nays: None. Chairman Bancroft did not vote as Chair.

**Motion Carried**

**c. Recommendation to approve a proposal for a class B1 liquor license for Taco Madre, located at 902 S. Randall Road, Suite A, St. Charles.**

Chief Keegan mentioned that this also advanced from the Liquor Control Commission meeting earlier in the evening and passed with a vote of 4 – 0. He noted that the petitioners own and operate Taco Madre restaurants in Geneva, Montgomery, and North Aurora. They are looking at the former Taco Fresco location on Rt. 38. They have been in operation for several months, their material has been reviewed and they operate several other locations that include liquor. There was a concern with a local manager that was vetted. The applicants feel comfortable moving forward. The petitioners will be holding the liquor license not the manager.

Ald. Turner asked the applicants how long their other locations have been in business. Israel Garcia (902 S Randall Road), the first location was opened 5 years ago; the second was opened 4 years ago.

Motion by Ald. Turner, second by Ald. Vitek to recommend approval of a proposal for a class B1 liquor license for Taco Madre, located at 902 S. Randall Road, Suite A, St. Charles.

**Roll Call: Ayes:** Lewis, Stellato, Silkaitis, Payleitner, Lemke, Turner, Gaugel, Vitek, Bessner; **Nays:** None. Chairman Bancroft did not vote as Chairman. **Motion Carried**

**d. Recommendation to approve a proposal for a class B1 liquor license for Burrito Los Asaderos, Inc. located at 2400 E Main Street, St. Charles.**

Chief Keegan introduced the next item on the agenda for Burrito Los Asaderos, Inc., and noted that it advanced forward from the Liquor Control Commission earlier in the evening with a vote of 4 – 0. It was also noted that the owner also operates Burrito Guacamole, located at 818 E Main Street, however that location does not have a liquor license. Burrito Los Asaderos is located in the strip mall located at Dunham and E Main. They have been open for several months. We did vet some of the material in the packet. There was a concern with some of the information regarding the owner/operator. We spoke at length with the owner about these issues which are reiterated in your packet. After speaking with the applicant and the detectives that did the background check, I feel comfortable advancing this forward.

Motion by Ald. Turner, second by Ald. Stellato to recommend the approval of a proposal for a class B1 liquor license for Burrito Los Asaderos, Inc. located at 2400 E Main Street, St. Charles.

**Roll Call: Ayes:** Lewis, Stellato, Silkaitis, Payleitner, Lemke, Turner, Gaugel, Vitek, Bessner; **Nays:** None. Chairman Bancroft did not vote as Chairman. **Motion Carried**

**\*e. Recommendation to approve a resolution and use of amplification equipment for the 2019 St. Patrick's Day Parade.**

Motion by Ald. Turner second by Lemke to approve the omnibus vote.

**Voice Vote:** Ayes: Unanimous; Nays: None. Chairman Bancroft did not vote as Chair.

**Motion Carried**

**5. Finance Department**

**\*a. Budget Revisions –November, 2018.**

Motion by Ald. Turner second by Lemke to approve the omnibus vote.

**Voice Vote:** Ayes: Unanimous; Nays: None. Chairman Bancroft did not vote as Chair.

**Motion Carried**

**6. Information Systems**

**\*a. Recommendation to approve an agreement with Intellias, Inc. for Infor Lawson software professional services for a not-to-exceed cost of \$37,938.**

Motion by Ald. Turner second by Lemke to approve the omnibus vote.

**Voice Vote:** Ayes: Unanimous; Nays: None. Chairman Bancroft did not vote as Chair.

**Motion Carried**

**7. City Administrator**

**a. Discussion concerning Carriage Oaks Senior Complex.**

City Administrator, Mark Koenen discussed notification that was received regarding Carriage Oaks, located on S 14<sup>th</sup> Street. The Carriage Oaks Facility is a senior independent living, not-for-profit facility that has been around since the late 1990's. The request that was received is a request that Carriage Oaks Independent Facility, a not-for-profit that we know today would be transferred to a new owner. That new owner would not be a not-for-profit, but a LLC. It would become a facility that would be a market rental facility in the City of St. Charles for seniors.

Carriage Oaks is a Senior Facility in this facility you buy interest, or become a member of the facility. An initial fee is paid and in addition there is a monthly charge for maintenance services. The new model would be a rental facility.

When this was put together in the late 1990's The City of St. Charles and The St. Charles Township were named as sponsor members. The original concept also provided for the residents of Carriage Oaks to be resident members. As a result of the desire to sell the property the Mayor's office received notification that we as a sponsor member would need to approve the transfer. In addition to the City of St. Charles, the St. Charles Township and the residents living at Carriage Oaks need to approve it as well. A vote was taken by the residents of Carriage Oaks and they approved the transfer with a vote of 70 in favor, 9 not in favor, and one who didn't vote.

The St. Charles Township met and had the same discussion and approved moving forward subject to their attorney working out some indemnification language.

We have the opportunity to approve the sale, say no to the sale, or another option would be to withdraw/resign as a sponsor member. Being a sponsor member meant that both the Township and the City of St. Charles have a representative on their organizational board and would offer input and guidance. The City of St. Charles along with the Township has made an appointment for that position through the years. The last appointment was made in 2015.

Mr. Payne who represents the purchaser, and Attorney Petisch who represents the seller are here this evening. They can best identify this deal and answer any questions. Attorney McGuirk and Chris Minick have also been involved in the process as we gathered information.

Mayor Rogina asked for elaboration on what the sponsorship meant with respect to the industrial bonds that were issued as a means of financing Carriage Oaks and if the City is in any way liable for the bonds.

Mark answered that as a function of the original deal the City of St. Charles provided its name for the issuance of industrial revenue bonds (IRB). The intention was to try and use our good name to garner the owner a better opportunity in the bond market to get a better rate. The intent was to make the initiation fee more affordable. The bonds are still open. Mark also indicated that the City is not liable for the bonds.

Attorney Rick Petisch (140 S. Municipal Drive, Sugar Grove) informed the Council that he has been retained by the Board of Directors of Carriage Oaks to represent them in this possible sale. He went on to say that the sponsor memberships fell through the cracks for both sides. The by-laws provide for sponsor members, being the City and the Township and that neither had actively participated in any board meetings, day-to-day or year-to-year operations for Carriage Oaks. This is why the option of resigning as sponsor member is being offered. He also mentioned that they would welcome the City to vote yes for the sale because of the resident response. Attorney Petisch noted that some residents were in attendance that voted against the sale, however of 85% of the residents voted in favor. Attorney Pettish went on to explain that the vote was taken after several open meetings with the residents where the financial implications were fully discussed and presented. They were each presented with what they would pay as renters as opposed to members. I'm urging you to vote either yes or to simply resign as a sponsor member. Attorney Petisch mentioned that the appraisal and financials were shared with him and that the best deal possible was negotiated with the residents and that the residents will receive all but 10% of their money back from their initial investment. He also noted that due to the influx of senior housing rental facilities in the area it has made the buy-in situation difficult due to the fact that after a member passes the family has to wait to see if there is another individual that is willing to buy that persons interest. Only then can the money go back to the family. This permits the money to go back to the families/members now in hopes that it will be easier in the future.

Chairman Bancroft asked how long Attorney Petisch has represented Carriage Oaks, if he was retained for this transaction only, and if he ever represented Carriage Oaks in the Past. Attorney Petisch explained that he has represented Carriage Oaks for approximately 6 months. He was retained to cover this transaction and has not represented them before.

Chairman Bancroft verified with Attorney Petisch that an appraisal was shared and asked if the Board of Directors for Carriage Oaks engaged its own appraiser, or if they just received an appraisal from the buyer? Attorney Petisch answered that they received an appraisal from the

buyer.

Chairman Bancroft addressed Attorney Payne, the representative of the buyer, noting that Attorney Payne is on both sides of the transaction as the managing agent and on the buyer's side. How did you assure that all the corporate formalities were put together and all information was shared with the individuals who voted on this?

Attorney Payne (Essex Corporation, Omaha NE) replied that Essex Corporation originally developed the community and reached out to the City for their sponsorship. He said they have been the developer and the management agent throughout the 9 years of the community. They have other communities in the Fox River Valley, Greater Chicago Metro Area, and other states. Several of the communities with the model are near the point of bankruptcy where residents have lost all of their initial payments. This is something that is problematic. It's happened at Carriage Oaks that a resident lost their entrance fee because they weren't able to find anyone to purchase the membership. Families are forced to make the decision to continue to pay the monthly charge, or walk away from 5 or 6 figures. He said that the reality is that if it continues to go this way residents will lose their money. They were able to offer 95% of their money back with this deal. He brought up that he is on the board of directors as a management agent appointed member, there are 3 resident members, a management appointed member, and 2 community at large members appointed by the City and the Township. He noted that it was the board that directed him to order on behalf of the board the appraisal for the community. It was shared with him to present to the board, but was ordered by the board. He went on to say that they had 2 meetings with the residents and they were made completely aware the entire time that Essex would be the end owner and none of the operations would change. They were given an opportunity to vote via ballots. In addition to the meetings there was opportunity to meet individually with the executive director, him and to call Mr. Petisch. There have been plenty of opportunities to have conversations with several people at any level in what has been a transparent transaction.

Ald. Turner said he would like to make sure that the City has the opportunity to review the information that was given to the individual residents and that they actually understand what was presented to them. Attorney Petisch indicated that they would be able to provide the Council with the type of information that was provided to the residents. Ald. Turner expressed his concern that the residents somehow be held liable if the sale doesn't go as planned. Attorney Petisch assured him that the individual residents wouldn't, nor would the City, and that's why Essex is providing indemnification for the Township and the City. Drafts of those indemnifications have been submitted.

Ald. Lewis said she is interested in who the board members are, how many there are, their background, if they are volunteers, paid? Attorney Payne answered that there are 6 individuals on the board. Three are residents, he is one, and 2 are sponsor appointed members, one from the Township and one from the City. He went on to say that over the past 13 years the City and Township's involvement has not been direct, but indirect, sending a name to the Mayor's office and shared someone willing to run for the board in a non-resident capacity as the City or Township's representative. The board was unanimous in their support of proposing this to the greater constituency of residents. Every year one of the resident member changes, and as long as we're retained as the membership agent there is a spot on the board. The board has the ability to not retain the membership agent but always has. The other two member stay on until they decide otherwise and it's nice to have the City and Township appointed members with several years on the board to offer their perspective.

Ald. Lewis asked how many vacancies they have right now that are trying to be sold and aren't selling and how they are marketed. Attorney Payne indicated there were 5 and that they have a very robust marketing/advertising program. Ald. Lewis asked if the resident's monthly costs will go up considerable with the sale. Attorney Payne said the residents will receive 95% of their entrance fee back. Under this model, with residents being paid out, bonds being paid off, there is a larger mortgage and therefore a larger monthly charge. Everything has been presented in advance to the residents.

Attorney Petisch made note that the rental agreements would be month-to-month and there would be no obligation from the family if a member passes.

Ald. Bancroft asked if it was mutual right for both the landlord and the tenant have the ability to give notice and terminate the lease. Attorney Payne said it's not their intent to evict and it's the most flexible way they could offer what was in the best interest of the resident. The hope is to keep everyone there as long as possible. Attorney Petisch said there are provisions for violations of the rent, failure to pay rent, it would be the same, 5 day notice.

Ald. Bessner asked why the residents aren't receiving a full refund of their initial investment. Attorney Payne said that what is being paid between what is going to the residents and what is being paid towards the existing debt far exceeds what it appraised for. Ald. Bessner asked if the residents that decide to stay are able to stay there for up to 2 years at their existing rate. Ald. Payne indicated that was correct and that they locked in their rent that it would not go up for 23 months. Ald. Bessner asked if it effects how they get they get paid back, Attorney Payne said it does not. Attorney Petisch noted that it was one of the provisions negotiated after he was brought in to represent the not-for-profit.

Ald. Bancroft asked when the property is acquired and the rents go up what the value of the property will be. Attorney Payne indicated that it's a little bit higher but still coming in at less than what they are paying for it now. He went on to explain the in order to get the approval of the residents they had to set the market rate very low. Significantly less than the market study showed, but it's what has made Carriage Oaks one of the best value communities. Our intent is to keep it that way.

Mayor Rogina asked what his response would be to someone who said they came into this knowing that if they sold their unit they would get something for it. What do you think the reason is that someone not would take a 90% - 95% refund of their money, pay rent knowing in 23 months it will go up, but they have the option to move? Why do you think the reason is for the no votes? Attorney Payne answered he thinks it's because they are looking at the higher rent. Some may be on a fixed income, but unfortunately they don't always see the big picture of the broader market and how they are at a real risk at losing their entrance fee.

Mayor Rogina asked if the community is aware of what the average rent increase will be after the 23 month hiatus. Attorney Payne indicated that it has been shared multiple times at each of the public meetings and individual meetings. The average year-to-year increase will be 3% - 5%, because that's what it has been at that community over time and its operating the same as it has been. Attorney Petisch clarified that everyone's rent would go up after the sale, that increased rent will stay the same after 23 months. There will be an initial increase. Mayor Rogina asked what the percentage of that increase will be. Attorney Petisch said it varies because there are certain members who paid more than others. Mayor Rogina asked if the residents received

information to show all the variables. Attorney Petisch responded that they did.

Ald. Silkaitis asked again what the increase will be at the point of sale. Attorney Payne indicated that there are 2 different pricing plans being discussed, and because the rents are so different it's hard to say. Ald. Silkaitis asked if rent is \$2,000 what the increased rent would be. Attorney Payne asked for a few minutes to answer.

Ald. Lewis asked what the financial impact to the City would be and how it would affect the property taxes, services, water, how does that change. Mark Koenen answered that Township Assessor would assess the property; it's owned by one owner even though it's a rental facility. The property tax would be paid on what the assessor's fee was based the rate that individual local governments have set the rate to be.

John Freidline a resident of Carriage Oaks addressed the council. He indicated that he has been living at Carriage Oaks for over 10 years. He is surprised that he is being asked to sell his home and he doesn't want to sell. He stated that he currently pays \$2,210, which will go up to \$3,611 with this new proposal. I'll get 90% of my entrance fee back. In 5 years it's gone with this deal.

Mayor Rogina asked if the structure remained the same, non-for-profit, and the risk is on you or your heirs to sell. Does that bother you? Mr. Freidline answered no, and that he believed it was a vote by the heirs, not the residents. They are the ones who will benefit, he opposes the sale. Mayor Rogina asked if the response that a lot of these development are going belly-up? Are you concerned at all about the fact that you could lose everything? Mr. Freidline indicated that he understands and he asked how many vacancies Carriage Oaks has, it's five. Five vacancies are not that bad. It's over 90% occupancy. This makes no sense to me.

Ald. Bessner asked Mr. Freidline if he will be paying additional on the first day this takes place. Mr. Freidline indicated that he would and he would also be required to pay a security deposit. Ald. Bessner indicated that he thought there would be no increase or 3%-5%.

Ald. Lewis asked if utilities are included in the monthly fee. Mr. Freidline said it doesn't, but it will when it converts to a rental.

Chairman Bancroft noted that the City is being asked to either withdraw or vote in favor, and there are realities that everyone should be aware of. There are often a small percentage of the descenders, and there has been a public policy decision made that those descenders can get dragged along. He mentioned that because the City is being asked to do something he would like to understand what was said and disclosed to the residents so they understand. In addition, because the City is being asked to do something he would like to know that the value is true, the disclosures were made, and that we can't just take their word for it.

Ald. Stellato indicated that the last sentence in the memo says that the transaction needs the City's approval to proceed. He asked what the fallback is if we do something that is counter to what Essex Corporation wants. It's been approved by the members and the Township, what if the City decides against this.

Attorney McGuirk responded that he doesn't know at this point, but it was represented that if the City withdrew or resigned it would have the same effect as an approval.

Attorney Petisch also said that he doesn't know because although there has been a member on the Board, supposedly appointed by the City, there hasn't been any direction, control, or anything else through the City, he isn't sure if it needs the City's approval. I pulled a random summary. These persons rent was \$1,045 and it will go up to \$1,742. It varies depending on the size unit you have and what you were paying.

Chairman Bancroft asked if there are residual owners of each of the 5 vacant units or have they forfeited back to the corporation?

Attorney Payne responded that the 5 vacant units are with folks who no longer reside at the community and are making monthly charge payments in hopes of transferring.

Mr. Lentz addressed the Council. He stated that he just moved to Carriage Oaks in April, 2018. He waited 1 ½ years, paid his fees thinking he would be there the rest of his life. Now to find out that his rent is going up 70%. All the rents are going up a minimum of 40%, some more than 70%. We've had to reconsider. It says in the proposal if you vote no, you'll move out by January 31, 2019. We've made arrangements to move out.

Attorney Payne said it does say "No Lease Move Out by 1/31/19" as a header. It's for the families that aren't executing a lease because they are no longer residing at the community. It has nothing to do with the vote. Even if they do sign a lease it's month-to-month and they can move out at any time.

Cheryl King (120 Copper Lane, Sugar Grove, IL) the executive director of carriage oaks explained that she has been working at Carriage Oaks since it opened in 1999. She noted she handles the marketing as well. When we started this discussion Essex came to her and wanted her blessing to propose this to their board of directors, and she was on board due to what's happened with one of their sister communities. There is competition coming to the area that is rental communities. We are being proactive.

Ald. Stellato asked Attorney McGuirk what position the City would be in, as far as the descenders who are not happy? What liability would the City incur, and what protection do we have?

Attorney McGuirk responded that an indemnity agreement has been requested from Essex and the new owner entity. In addition, the City would be named on their insurance liability policy. He noted that the details haven't been worked out yet, but there have been some general discussions. He said there is some remote liability for a possible audit on the IRB. Indemnity would help with that, but as to anyone else who could bring an action against the City, anybody knows.

Chris Minick said that regarding the IRB's that the bonds will be paid for when the sale goes through, but there is a period of three years that the IRS would have to make sure that all the tax exemptions covenants have been provided for and followed throughout the life of the transaction. However it's a remote possibility, but in the event that audit did occur, the City would need indemnification.

Chairman Bancroft noted that there are things that need to be done before we decide what steps to take.

Attorney Payne said that once the communities turn and residents and families start losing their six figure entrance fees, that's when law suits can happen. He said that he's seen sponsors get brought into that in the past, but under the proposal they are getting their money back and the real risk is if the community struggles once operational.

Chairman Bancroft clarified that Essex is a for-profit organization, and noted that Cheryl King works for them, and even though they asked permission to approach the board of directors, they work for them. He noted that the information being presented to the committee is a transaction where they are on both sides, and are a fiduciary to them. Chairman Bancroft mentioned he suspects there is a value play by the conversion of the ownership and once this becomes an apartment and the rents go up, it creates value for the same asset that hasn't changed its real estate tax and its operating expense, and that it puts the City in a tough position. He noted that he isn't sure that he will ever get to a place where he would be a proponent of this because he doesn't feel close enough to it, but that if 70 people voted for this he doesn't want to stand in the way of someone who looks at this as a saving grace for their investment.

Mayor Rogina said that he is bothered by the fact that the City was approached to sponsor this and the reason for the sponsorship was to provide some savings in terms of the bonds. Now because we're sponsors we may have some liability. He noted that he agrees with Chairman Bancroft that nothing take place tonight and would submit that the staff receives questions prior to us deciding what to do in committee.

Ald. Turner noted that when someone wants buy something outright from condo to rental they usually receive a premium and asked if this has ever been put on the market? Attorney Payne answered that that can't be done because it's a non-profit and is set up that a private individual cannot benefit so you cannot pay a premium.

Chairman Bancroft asked if that would prohibit a non-for-profit from entering into an arms-length deal for what that property is worth? Attorney Petisch responded that that every community forum that was had, and where he was present on behalf of the non-for-profit, the residents asked if the residents were going to make money and the response was yes and that the best deal possible is being negotiated, however it's being taken over as a for-profit enterprise and they are in the business of making money.

Ald. Lewis asked if 70 residents had voted no if they would still be doing this? Attorney Petisch responded that they would not because they needed 75% resident approval to move forward. Ald. Lewis asked if they have plans to build on the vacant land next to the community. Attorney Payne indicated that it's a possibility but doesn't even know who owns the land at this point.

Ald. Silkaitis brought up that this was approved originally to encourage the development and is concerned if the City would be liable. He said he'd like to have that information prior to making a decision.

Ald. Stellato indicated that approving the sale is off the table for him. If we resign there is limited liability, if we continue to stay on the board we continue on the way we're going, but to approve the sale is the most risky. They accomplish what they want if we resign, we still get rid of the IRB, we can accomplish our goals either way, but I would have a hard time approving the sale.

Motion by Ald. Lemke, second by Lewis, to postpone the discussion regarding the Carriage Oaks Senior Complex to the Government Operations Committee meeting on January 21, 2019, pending further conversation and information.

**Roll Call:** Ayes: Lewis, Stellato, Silkaitis, Payleitner, Lemke, Turner, Gaugel, Vitek, Bessner; Nays: None. Chairman Bancroft did not vote as Chairman. **Motion Carried**

**8. Executive Session**

- Personnel – 5 ILCS 120/2(c)(1)
- Pending Litigation – 5 ILCS 120/2(c)(11)
- Probable or Imminent Litigation – 5 ILCS 120/2(c)(11)
- Property Acquisition – 5 ILCS 120/2(c)(5)
- Collective Bargaining – 5 ILCS 120/2(c)(2)
- Review of Executive Session Minutes – 5 ILCS 120/2(c)(21)

**9. Additional Items from Mayor, Council, Staff, or Citizens.**

**10. Adjournment**