

**MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
MONDAY, MAY 16, 2016**

1. Opening of Meeting

The meeting was convened by Liquor Commissioner Rogina at 4:33 p.m.

2. Roll Call

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

Absent:

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

3. Motion to accept and approve the minutes of the April 18, 2016 Liquor Control Commission meeting.

Motion by Mr. Amenta, second by Ald. Lewis to accept and approve the minutes of the April 18, 2016 Liquor Control Commission meeting.

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

4. Recommendation to approve an Ordinance Amending Title 3 “Revenue and Finance”, Chapter 3.42 “Alcohol Tax”, Section 3.42.020 “Definitions”, and Section 3.42.030 “Imposition of Tax” of the St. Charles Municipal Code.

Chris Minick: Enclosed in your packets are some amendment provisions that we would like to codify the City’s current practice on how we handle special events where alcohol is served and tickets are sold for a lump sum price. As the Commission is aware, we’ve had several requests recently for various product tasting events and various special events in and around of the City where the price of admission includes a packet of admission and perhaps some food items as well the service alcoholic beverages. What we’d like to do is codified the practice of applying the 2% alcohol tax to that ticket price so that we remove that ambiguity of the code as to how we handle the alcohol tax and the alcohol tax liability of these organizations to the City. There are two suggested paragraphs that we would insert into the ordinance that are included in your packet. The first item is Section B that defines an event for the purposes of the alcohol tax code and then the next section is paragraph C which inserts language into the code to memorialize the practice that I just spoke about when you apply the entire 2% tax to the lump sum ticket price that the event sponsors will charge in that particular instance. Staff does recommend approval of this particular ordinance and modifications to the City code.

Mayor Rogina: To clarify we are just codifying it into the code what has been our past practice

for years? It's an easy process to help these not-for-profits to sort out food from alcohol. This makes it cleaner.

Motion by Ald. Payleitner, second by Mr. Gehm to recommend approval of an Ordinance Amending Title 3 "Revenue and Finance", Chapter 3.42 "Alcohol Tax", Section 3.42.020 "Definitions", and Section 3.42.030 "Imposition of Tax" of the St. Charles Municipal Code.

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

5. Recommendation to approve an Ordinance Amending Title 5 "Business Licenses and Regulations", Chapter 5.08 "Alcoholic Beverages", Section 5.08.090 "License Classifications – Class D", and Section 5.08.100 "License Fees; Late Night Permit Fee; Fees Established" for a new D8 license of the St. Charles Municipal Code.

Chief Keegan: This is a recommendation to approve a new D8 classification for the business proposal that will immediately follow my remarks. Late last year we were approach by a proprietor who wanted to open up a similar type business plan in the 1st Street business plaza called Paint with a Twist. That business never materialized but we had put motions in place to initiate a new classification; that being D8. So when we were approached by this business, we already had a lot of the language prepared. This issue here is to modify our code. We put out some correspondence to some adjoining municipalities that have similar business plans within their communities. I worked with Atty. McGuirk on the language; so codified in the attached ordinance is the language that encompasses an art entertainment district within a liquor establishment. This business plan involves art classes and the sale/consumption of both beer and wine on the license premises.

Chrmn. Rogina: I looked up last July's minutes and that's where we recommended to staff to come up with a D8 license after conversation of what you just talked about and it was moved by Ald. Payleitner and second by Mr. Gehm to have staff propose a D8 license. So we're just following through with what we suggest we do last July.

Ald. Lewis: Would this license, if they had outdoor seating, would this be in effect for outdoor seating if they chose to do so to go outside and paint?

Chief Keegan: This business did not ask for that in their business plan, but I think that would be on a case by case basis and we would have to initiate that discussion here at this commission.

Ald. Lewis: If someone else came along and asked for this, would we have to do another license class?

Chief Keegan: I don't think so, within our B/C classifications if that's the case so long as it is submitted into the business plan and site plan, we can approve it here at this commission and the Council level.

Atty. McGuirk: That's the way we've handled it, but we could put it in the ordinance. Those provisions may already be there, I would have to take a look at it.

Ald. Payleitner: As far as you know these proposed businesses will have no other retail sales involved. It's just for the classes involved. We can't have a liquor license that corresponds with retail sales.

Chief Keegan: That's not my understanding that would be the wishes of this proprietor.

Motion by Mr. Gehm, second by Payleitner to recommend approval of an Ordinance Amending Title 5 "Business Licenses and Regulations", Chapter 5.08 "Alcoholic Beverages", Section 5.08.090 "License Classifications – Class D", and Section 5.08.100 "License Fees; Late Night Permit Fee; Fees Established" for a new D8 license of the St. Charles Municipal Code.

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

6. Recommendation to approve a proposal of a new Class D-8 liquor application for The Painted Vine Cellar, LLC to be located at 1 W Illinois Street, Ste. 110, St. Charles.

Chief Keegan: This is a recommendation to approve a proposal of a new Class D-8 liquor application for The Painted Vine Cellar, LLC to be located at 1 W Illinois Street, Ste. 110, St. Charles. The aforementioned business we talked about is looking to occupy the Fox Island Square building. This is an up and coming entertainment district. Just as of late we have two different establishments that have been approved, Charleston on the River and Prohibition St. Charles; and with the addition of the 1st Street buildings that are currently being constructed. Mr. Kessler and his wife have submitted a comprehensive business plan, their paperwork is in order, and they are looking to get off the ground as soon as possible.

Mr. John Kessler, 40W555 Fox Creek Drive, St. Charles.

Chrmn. Rogina: I know this is becoming the new rage as this is in other communities such as Geneva; what got you and your wife interested in this type of business?

Mr. Kessler: We got interested by doing it ourselves for a number of years and started realizing we wanted to do more. It's a business that lends itself well to not having to be there from 9:00 a.m. to 10:00 p.m. all the time since it's scheduled events. We went to other locations in Geneva, South Barrington, etc. and we see where it could be up-scaled a little bit and to make this even a finer experience and charge more with the location and doing more evening things and other unique opportunities and have better quality painters and make it a better experience all around.

Ald. Lewis: Will there be any food?

Mr. Kessler: No, if anyone wants food, they can bring it in, but we won't serve it.

Ald. Lewis: So if we have parties, they can bring it in on their own?

Mr. Kessler: Yes, and if they decided to cater which we don't see happening in a 2-1/2 session, we would be happy to recommend some of our local restaurants.

Ald. Payleitner: Are you going to have drop-ins or is this all scheduled parties?

Mr. Kessler: The goal is to get to six open sessions per week and then private parties on top of that. We are going to avoid Mondays/Tuesdays, but if someone wants to do a private event, we would take it and concentrate it between Wednesdays through Sundays. We'll also be right next door to Kimmer's.

Ald. Payleitner: A follow-up to my question from the previous ordinance item, will you have any additional sales or is just for the service? No painting products, etc.?

Mr. Kessler: No, we don't think it's worth it.

Ald. Payleitner: Also just so you understand that Illinois State Liquor Law does not allow it. If you sell liquor for consumption, you can't sell anything else.

Chrmn. Rogina: Do any of your competitors sell anything else in their stores?

Mr. Kessler: The only thing I seen in one of the businesses was the selling of frames for your artwork.

Chrmn. Rogina: I would be interested in getting a state interpretation as these places are all around. So the question I have is if you're going to allow painting and have people drink, etc.; to me a frame, for example, for their picture would be a complement. Whether that be an interpretation of a violation of state law, I don't know. It would be interesting to find out, if in fact down the line, you decide you would like to sell frames.

Mr. Amenta: Isn't this contingent on the new license being past first before this one?

Chrmn. Rogina: Absolutely, this would follow in order by having the law in place before the business.

Motion by Mr. Gehm, second by Ald. Payleitner to recommendation to approve a proposal of a new Class D-8 liquor application for The Painted Vine Cellar, LLC to be located at 1 W Illinois Street, Ste. 110, St. Charles after the approval of the ordinance itself.

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

- 7. Recommendation to approve the Class E-4 Temporary License for this series of three (3) events to be held on the 1st Street Plaza. The requested dates are: July 6, August 3, and September 7, 2016 from 5:00 p.m. to dusk. (The businesses involved are ZaZa's Trattoria, Puebla Modern Mexican, Pizzeria Neo, McNally's Traditional Irish Pub.)**

Chief Keegan: This is recommendation to approve the Class E-4 Temporary License for this series of three (3) events to be held on or in the 1st Street Plaza. Shay from McNally's is here tonight, but this is a culmination of four of the 1st Street Plaza businesses getting together, working with the DSCP, and it was a good process as we went through it. ZaZa's, Puebla Modern Mexican, Pizzeria Neo, and

McNally's would like to work in conjunction with the musicians that are there on Wednesdays to do what is called "Wine Down Wednesdays". They want to close down 1st Street Plaza from 5:00 p.m. 'til dusk and treat it as a courtyard, and have the folks not only enjoy the music but also be able to take their drinks out into the courtyard. There is a Hold Harmless agreement that all four businesses have executed, we looked into their licensure and this business model plan meets the E4 license. Each will have their respective Dram Shop insurance. We've indicated the first Wednesdays of July, August, September, and would like to have all three dates approved here and later on at the Government Operations. They want to see how the first one goes. It's a \$100 dollar expense for each occasion that will be shared amongst the four businesses. Originally we thought there would be a police presence that would be required on an overtime basis. We've worked with the petitioners and once we looked at the site and business plans, we'll do walk-throughs with our patrol staff but we're not going to burden the businesses for that additional expense in having an officer there from start to finish. These are four good solid businesses within our community. They need to police themselves as they typically do day in and day out. I feel solid and positive about this as the Chief of Police.

Shay Clark, 1890 Glenwood Drive, Dundee, IL.

Chrmn. Rogina: Your packet states you're doing some modeling after Dundee.

Shay: Yes, East Dundee has been doing this the last couple of years and when I saw it first last year, I thought this would really fit well in our plaza area on 1st Street.

Chrmn. Rogina: It's really refreshing in my mind to see four businesses work in a collegial fashion here; and the DSCP's mission is to have more small events downtown, use our beautiful plaza – so I really like this concept. My third point is this comment has been bantered around to me that people are saying that on occasion we close the whole 1st Street down and make it like a piazza like in Italy to let people roam around like a market. The concept is always intriguing in just getting people into our downtown area.

Shay: Our businesses are committed in doing things the right way in making sure no alcohol leaves the plaza.

Mr. Gehm: I agree with the Mayor that in putting a plan together and actually use the plaza, that doesn't get used much, and have people enjoy themselves is great. My only question is security and having it limited with only the three entrances to get in and out, it will be monitored by staff security?

Shay: Yes.

Ald. Payleitner: I like the idea but the esthetics of the plaza would be destroyed with orange snow fencing. Are there any other options?

Shay: I mentioned snow fencing because it's cheap and plentiful, but I hadn't given it much thought of any other way of doing it. It could be done without any fence at all and that would mean a few extra people to monitor it to keep people inside with the drinks.

Chrmn. Rogina: I agree about the esthetics of the fence and not having a fence is good, but how do you have control?

Shay: The idea was to funnel people so that one person could do it at the east point, west point, and garage parking area.

Tina: Balcony rope.

Everyone: Good idea.

Chrmn. Rogina: If the concept is good to the committee, I suggest we move on and let staff investigate on something more esthetically appealing.

Mr. Amenta: I agree, it's a beautiful area and to cheapen it with snow fencing is a no.

Ald. Payleitner: I would like to see dusk defined.

Shay: Dusk would be somewhere between 8:30 and 9:00 p.m. Entertainment is provided by the DSCP on Wednesdays and Fridays and I would work with Jake from the DSCP on specific music for the Wednesdays that we're talking about.

Ald. Payleitner: I would like to see you end with the music piece or a half hour after them.. They don't go to dusk.

Shay: We could work with the music. There is also talk about putting the lights back in the trees, not many people see them at Christmas, but during the summer there would be more people outdoors.

Ald. Lewis: There are other businesses in the plaza besides the restaurants; have you contacted them?

Shay: I have spoken to everyone including Dave the next door neighbor, who is our only resident of the plaza, and he is absolutely in favor of it.

Ald. Lewis: Food – it says in your packet there will be food involve. Explain how that works.

Shay: Well, for Pizzeria Neo, they do pizza and can put in a box. All four of us will come up with something suitable that can be taken out into the plaza. It's carry out no table service. It's just to get people outside for a few hours and then come back inside. We'll also be responsible for the cleanup of the plaza afterwards.

Ald. Lewis: I am in favor of this, but I think we're changing policy here. We're going in a different direction of years and years of making sure that no one ever walks out of the door with a drink in their hand; and now on Wednesdays, and possibly more, it's going to be managed but alright to do. I guess I want to make sure we have our ducks in a row and in order for the next group that wants to do something like this. I want to be careful in setting a precedent.

Chief Keegan: Shay has done a really good job in being the spokesperson for this. They will have plastic glasses and people will know the barriers and exit points. We're going to be out in force as much as we can, but really it's going to fall back on the businesses and they will dot the i's and cross the t's. If we're going to do this in good faith as a Liquor Commission, I think it starts with the concept of these businesses because they've given us no reason to doubt them.

Chrmn. Rogina: I think this is a good precedent with good people to get things rolling. Now, could something happen to throw things off? Sure, you take a chance on that. But I go back again to our business community who I've heard for the last 6-8 months that we like the concept of trying to bring people downtown that are going to patronize our businesses as oppose to the bigger blast of closing streets down and have elephant ears being sold on corners. I want to see our businesses succeed and am looking for ways that we can advance the businesses. If it doesn't work – we'll shut it down.

Ald. Lewis: What comes to mind is the car show like they have in Dundee. We have a car show and they may come along and ask the same.

Chrmn. Rogina: This is a concept regarding the car show, but I've had people come to me saying it would be a good idea in using the old Cordon Blues, which is vacant, and on those car show nights, setting up on the patio, beer and brats. What a wonderful idea. It would showcase that restaurant for somebody perhaps to get interested in moving into that restaurant. So I'm in favor of showcasing any or all of our businesses in an orderly manner.

Ald. Lewis: I agree with you to a point on that. One other thing I was thinking is what if we did smaller steps to move this along and just do July and August and not do September this year? It's after school starts, it's not summer any more. Start out small and don't invest a lot of money in roping and chains. That might be a chance to sit back and think about the direction this is going to go.

Shay: I agree. This is a learning curve. My colleagues all think this is a great idea, but until we actually make it work, we don't know all the outcomes.

Mr. Amenta: I don't see a problem with approving all three and they can decide after the first or second one if they want to do the third.

Ald. Payleitner: I worry about sending a message and I would like the message to be that we're doing this with caution. Not foreseeing a problem, but not launching 10 years of this but to do it one at a time. So there is one license for four businesses for three events and \$100 each time.

Chief Keegan: There is a lot work that has gone into this and its much easier after its put in place to rescind it or stop the presses than to come back and ask for more. There were a lot of meetings, discussion, and effort that went into this.

Chief Keegan: I would like for the minutes to show that we ask for last call/last service outside at 8:30 p.m. and cleared of alcohol by 9:00 p.m.

Chrmn. Rogina: I would also for an amendment to not recommend a snow fence but some more esthetically pleasing barrier.

Motion by Mr. Amenta, second by Mr. Gehm to recommend approval of a Class E-4 Temporary License for this series of three (3) events to be held on the 1st Street Plaza. The requested dates are: July 6, August 3, and September 7, 2016 from 5:00 p.m. to dusk. (The businesses involved are ZaZa's Trattoria , Puebla Modern Mexican, Pizzeria Neo, McNally's Traditional Irish Pub) with noted two amendments noted above.

Roll Call: Ayes: Gehm, Payleitner, Lewis, Amenta: Nays: None. Chrmn. Rogina did not vote

as Chair. **Motion Carried.**

8. Recommendation to approve a proposal for a Class B liquor license for “Alexander’s Café 64” to be located at 1650 W Main Street, St. Charles (former Gabby’s Restaurant).

Chief Keegan: This is a recommendation to approve a proposal for a Class B liquor license for “Alexander’s Café 64” to be located at 1650 W Main Street, St. Charles (former Gabby’s Restaurant). Mr. Karas is looking to occupy the former Gabby’s which has been shuttered for the last year or so. He not only owns and operates the Rookies in St. Charles but also the Village Squire restaurants in Dundee and South Elgin and other Rookies in the northwest suburbs. This is his second Alexander’s concept. He has one on Rt. 31 in Elgin. Mr. Karas is looking to open up a full service restaurant for breakfast and lunch sales. We did talk offline that there might be a conceptual line moving forward to either entertain a different business model down the road and/or for banquets or private parties. He does realize his request before you is a Class B liquor license which operates until midnight. We found no errors or problems with Mr. Karas site or documents.

Mr. Bob Karas, 646 Lake Ridge, South Elgin.

Chrmn. Rogina: We have several breakfast restaurants on the east side of town with Abby’s downtown and it’s nice to see another breakfast establishment on the west side of town. I’ve been to several of your establishments and you’re a good business man.

Mr. Gehm: I too live on the west side and after Gabby’s left, I look forward to your restaurant opening up.

Ald. Payleitner: It was just last year you stated you were barely make ends meet so I’m glad to see your doors are still open.

Mr. Karas: It is a tough business. I work ten times harder and this is my tenth location and probably made more money with only three locations 10 years ago. The Alexander’s in South Elgin was a little old, dated, and tire and we have recently remodeled and spent a million dollars on it and gave it a new look which is very modern, hired a new chef, and put together a very modern breakfast/lunch menu and the plan is to do the same thing with this location. Breakfast is more profitable these days and any restaurant that is open for breakfast is generally not open past 2:00 p.m. – that seems to be the trend.

Ald. Lewis: You have a liquor license up in Elgin?

Mr. Karas: Yes, we are not going to have full bar of alcohol and we don’t any counter service, just table and booths. It’s a good location but parking may be a little bit challenging.

Motion by Ald. Payleitner, second by Mr. Gehm to recommend approval of a proposal for a Class B liquor license for “Alexander’s Café 64” to be located at 1650 W Main Street, St. Charles (former Gabby’s Restaurant).

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

9. **Recommendation to approve an Ordinance Amending Title 5 “Business Licenses and Regulations”, Chapter 5.20 “Massage Establishments”, Sections 5.20.010 “Definitions”, 5.20.080 (B), “Issuance and Denial of Licenses”, 5.20.110 “Conditions and Restrictions of Licenses”, 5.20.170 “Notices” and 5.20.180 (C) “Revocation or Suspension of Licenses” of the St. Charles Municipal Code.**

Chief Keegan: This is a recommendation to approve an Ordinance Amending Title 5 “Business Licenses and Regulations”, Chapter 5.20 “Massage Establishments”, Sections 5.20.010 “Definitions”, 5.20.080 (B), “Issuance and Denial of Licenses”, 5.20.110 “Conditions and Restrictions of Licenses”, 5.20.170 “Notices” and 5.20.180 (C) “Revocation or Suspension of Licenses” of the St. Charles Municipal Code. We are about one year into our massage licensing effort. We’ve taken a three-prong approach here at the City to legitimized massage practices within St. Charles. The first prong is the ordinance itself, initiated about a year ago. We’re the trail blazers in this regard and for the most part we’ve seen the fruits of our labor paying out in a legitimized stance in St. Charles.

The second phase that has fallen on Cmdr. Gatlin and my shoulders is the inspection compliance phase where we have an ongoing process to hold our licenses and businesses accountable with a zero tolerance type of approach. In fact four arrests have taken place ranging from prostitution to those that practice without a state issue massage license. The last phase of the three-prong approach is the due process phase or hearing phase; and within that hearing phase we take a look at our best practices to see what’s working and what we need to sharpen our pencil on. That due process component is what brings us here today.

The lion’s share of what we’re doing right now is the best practices and procedures we can in the industry. We’re trying to tackle a number of things: recidivism to make sure they don’t repeat that violation whether it be as simple as practicing without a massage license or not following some of the things codified in our ordinance. We are also looking for evidence of human trafficking and signs that folks are residing in the business in which we are inspecting. The last piece is the zoning.

So before you are three proposals to amend our ordinance. The first piece is to attack recidivism. What we seen in one location are repetitive violations of prostitution taking place. Contrary to all of our enforcement efforts, on behalf of the police department and city council enacting these ordinances, we’re still seeing the repeated acts of illicit activity. So before you is a stance that we would like to take if you have a location such as this, that regardless of our best efforts, continues to either rent out or find tenants that aren’t going to follow none of the laws of the State of Illinois, but also the ordinances of St. Charles. We’re asking that location not be allowed to function or have a current business as a massage facility.

Another component of this ordinance revision is residency. Of the four arrests that we made, on at least two occasions we’ve had signs of the folks operating the business are also residing there and evidence has been established whether it be clothes, toiletries, food. In some cases the business may be located in a strip mall and not a home and was also functioning as a residence of the masseuse.

Lastly the zoning piece; we’re continuing our efforts to be more collaborative in approving and regulating massage facilities. With this in mind, each and every application that comes forward, and the next license that we’re going to ask you to approve had a zoning question related to it. That’s why it’s important to look at this as an ordinance model where I not only look at it as the Police Chief, but

the Fire Chief; whether it involves life safety issues, egress/ingress of windows, how the business is alarmed and constructed, that our building official looks at the establishment on a case by case basis to make sure things are under requirements, what the business wants to operate and can legally function as such that the zoning is appropriate, and we've looked at it from best practices. We also have our Finance Department look at the business and applicant to make sure there are no outstanding liens to the City.

So this ordinance revision proposal is me coming back to you after a year saying this is what works and this is what hasn't, and this is what we need to do to stronger to strengthen our stance in our position within our ordinances. Any questions?

Chrmn. Rogina: I want to commend you, Counsel McGuirk, and Cmdr. Gatlin in putting this together. I know you've looked at the Wheaton model while crafting this ordinance.

Ald. Payleitner: When any license shall have been revoked for cause, no license shall be granted to any person for a period of five years. It doesn't say how many times.

Chief Keegan: Correct.

Motion by Ald. Payleitner, second by Mr. Amenta to recommend approval of an Ordinance Amending Title 5 "Business Licenses and Regulations", Chapter 5.20 "Massage Establishments", Sections 5.20.010 "Definitions", 5.20.080 (B), "Issuance and Denial of Licenses", 5.20.110 "Conditions and Restrictions of Licenses", 5.20.170 "Notices" and 5.20.180 (C) "Revocation or Suspension of Licenses" of the St. Charles Municipal Code.

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

10. Recommendation to approve a Massage Establishment License for International Medical Massage Association located at 2210 Dean Street #E-1, St. Charles.

Chief Keegan: This is a recommendation to approve a Massage Establishment license for International Medical Massage Association located at 2210 Dean Street #E-1, St. Charles. In talking about the three-prong approach, this particular applicant was pushed back a little bit to today's meeting from last month because of an issue on the zoning which was the last piece of the ordinance you just moved forward. This particular location is in the Randall Road Medical Office Plaza west of Randall and north of Dean Street. When it came to us we looked at the petitioner's background, site and business plans and found nothing of a derogatory nature that would preclude him from having a license. In fact this is the first petitioner we've seen who supplied numerous letters of recommendation from various folks in his profession. There was a question not so much about the St. Charles' zoning but the PUD that was initiated with Randallwood. Atty. McGuirk has opined on this along with Rita Tungare and documents are in your packet.

Michael Devo, Elgin, IL and my company name is International Medical Massage Association.

Chrmn. Rogina: It is refreshing to see as part of an application, solid recommendations. I know the Chief went through a very clear and concise point of the ugliness of what's happened here recently, but I want you to know in this spirit this is a thriving and profitable and good industry and should not be tainted.

Mr. Devo: Going along with your line of wanting to clean things up and going through the zoning issue with Russ Colby and having him described the PUD category they put me in, it was like tanning spas, masseuse and masseurs; those terms are no longer used. Those words are from the 70's. We are licensed and regulated and these groups should not be promoting massages anywhere unless they have a license. I would be happy to be a part of a commission on any massage any time because this affects me and I take it personal when these kinds of things happen.

Motion by Ald. Payleitner, second by Mr. Amenta to recommend approval of a Massage Establishment License for International Medical Massage Association located at 2210 Dean Street #E-1, St. Charles.

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

11. Discussion regarding Massage Establishment Citation and Hearing Notice for Still Waters Spa located at 2075 Prairie Street, St. Charles.

Chrm. Rogina: Now comes petitioner, James Keegan, Chief of Police of the City of St. Charles that on or about April 29, 2016, at approximately 12:28 p.m., the licensee, Still Waters Spa, LLC by and through its employees, officers and/or agents, committed the following violations of the St. Charles Massage Establishment code:

Violated Section 5.20.130(D) of the Massage Establishment Act which states:

"No person shall advertise, promote, or refer to himself or herself as a massage therapist as herein defined without being a massage therapist as provided in this chapter or Illinois statute."

Violated Section 5.20.110(A) of the Massage Establishment Act 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." On or about April 29, 2016, Still Waters Spa, LLC was operating under a Massage License issued by the City of St. Charles. That the acts detailed in Section 2 of this Complaint of Violation are prohibited and are in violation of and contrary to Sections 5.20.130(D) and 5.20.110(A) of the St. Charles Municipal Code."

The arraignment form suggests a guilty plea and we would call a hearing and mitigation and the licensee has an opportunity themselves or agent/representative to come forward and present evidence to support the position to minimize any penalty. It's my understanding that Mr. Navigato is here from Bochte, Kuzniar & Navigato representing Still Waters Spa, LLC.

Atty. Navigato: I'm here representing my client Still Waters Spa and work with Bochte, Kuzniar & Navigato Law Firm in St. Charles. I'm not here to challenge your due process. I understand what the code section says and I'm here to tell you that my client violated that section. My client is from foreign descent – Chinese and her name is Yanling Zhang. She is recently married to an American citizen. This incident arose as a result of them requesting re-issuance of their business license which the City issued to them in 2015. When they renewed this license, the St. Charles Police came out for inspection and my client, the owner, was not there. She was with her husband in Peoria on a medical visit and there was an unlicensed individual at the business. The Police Department set up an inspection and set up an opportunity for someone to go in and this unlicensed individual was there and began a massage of which she shouldn't of done. My client came in to see me and we went through your ordinance word by word. It wasn't easy as she doesn't speak very much English. Her husband was there and I made it very clear to her what her responsibilities are. I made it very clear to her of what you, as a commission, require of their business as owners and made it clear to her that this cannot happen again based upon the nature of the business. I'm happy to report that the offense seems to be limited to not having a licensed massage therapist on the premises. I'm also happy to report that it didn't go any further or beyond that. The City of St. Charles did reissue her business license for FY2016/17, found the establishment to be clean and sanitary and was in compliance with all the provisions of your ordinance in Section 5.20.110.

So as I stand before you today, my client does have her business license. I also submitted to you her massage therapist license by the State of Illinois as well as the new employee she has hired that is also a licensed massage therapist. Under your rules, regulations and ordinances there must be a licensed massage therapist on the premises at all times. This is going to be corrected today as I stand before you. They've hired another licenses massage therapist to run this establishment when my client, the owner, who is also licensed cannot be on the premises. She does find it difficult that her husband still lives in Peoria and they travel up to St. Charles to operate this business. Other than this incident, I'm not aware of any other incident where this business has not been in good standing with the City. It has passed all the requirements of the City to obtain the renewal of the license. It was a mis-step; however, in mitigation I don't believe in the nature of the offense that it was compare to some of the other offenses that you might see in this area as illicit as some of the other offenses. We would ask that the Commission grant some leniency in lieu of any type of suspension or revocation of the license and issue a fine which would be stern. In going forward this business would be in compliance with your ordinances and I'm confident that I've been able to convey to my client what she needs to do going forward.

Chrmn. Rogina: Thank you. It won't be necessary for you to stay here. We'll be going into executive session to discuss this, but so that I am clear, I know you pleaded guilty, but I want to make sure I understand this. Whether the City issued a valid license for the new year or not; I read the report and it stipulated as well as by you. What bothers me is

there are three dates here: 4/25, 4/29, 5/5. The 4/25 is the date that the police came to do the check for the new license. At that point in time there was a violation as numerated in the complaint and no citation was issued. On 4/29 the police returned to do a compliance check and at that time another violation occurred. So in four days nothing was corrected. Then on 5/5, after the compliance check, the same thing happened; three separate occasions in a period of 4/25 to 5/5.

Atty. Navigato: I was not aware of the 5/5 date.

Chrmn. Rogina: In our packet we have a Citation, Notice of Hearing on the premises to the licensee and have a detailed memo to Cmdr. Gatling from Detective Lamella regarding the same thing happened.

Atty. Navigato: I can't address the 5/5 date because I do not have that report. My client is unable to be here due to her husband's medical problem and that is why I'm here requesting a continuance. In light of your recommendation to Mr. McGuirk, I appeared on their behalf. The documents I have here do not contain a 5/5 date, so I was unaware of a third incident.

Chrmn. Rogina: By our rules and regulations there had to be a formal issuance of a citation, so that had to take place at some point. When the officer did go and administer that Citation and Notice of Hearing, the same conditions still existed. That's my point. Your argument does hold some weight and we'll go in and discuss it.

Atty. Navigato: I do believe the intention of the new employee who has the massage therapy license now is subjective to these dates. She now understands what her requirements and obligations are and how stringent they are.

Ald. Payleitner: I want to be clear on what the supervision piece is. Supervision has to be a manager mentioned in the license which would be the owner or designee.

Atty. Navigato: I indicated to her that she needs to come down and get her license amended to have that massage therapist on her license because that is what the ordinance does require. That person has to be specifically identified on her license.

12. Other Business

Chrmn. Rogina: I want to lay something out to the Commission for a future meeting. We require as part of the application a business plan. I've looked through all these business plans and we'll agree that some are lacking and others have too much detail that provide us with information on their finances, goals, and even competitive analysis. This goes into a public document that anybody can read. I don't want to put anyone at a competitive disadvantage by having them divulging secrets, thoughts, goals moving forward, etc. I'm asking that we have a future meeting with some conversation before we go to Council to have them opined on this. Let us start the ball rolling and ask the question of what should a good business plan include and what is over kill. I'm just planting the seed today for a future meeting and ask staff to come back and provide us with some meat to put on the bone and go from there.

13. Public Comments – none.

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

Motion by Ald. Payleitner, second by Mr. Gehm to enter into Executive Session at 5:50 to discuss massage violations.

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

Motion by Ald. Payleitner, second by Mr. Amenta to come out of Executive Session at 6:12 p.m.

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

15. Adjournment

Motion to adjourn by Mr. Gehm, second by Mr. Amenta at 6:14 p.m.

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