

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5

Title:

Discussion Regarding Two Tobacco Citations and Hearing Notices for Rose Smoke N' Vapor, Inc, 902 Randall Road, Ste. B, St. Charles

Presenter:

Chief Keegan, Police Department

Meeting: Liquor Control Commission

Date: July 17, 2017

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

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 cigarette license issued or impose a fine upon by reason of the Complaint of Violation filed by the Police Department of an offense happening on or about July 3, 2017 at the establishment of Rose Smoke N' Vapor, Inc. at 902 Randall Road, Ste. B, St. Charles.

Attachments *(please list):*

Citation and Notice of Hearing, Complaint of Violation, St. Charles Police Department Case Report, Title 5, Section 16.020 "Definitions" of the City of St. Charles Municipal Code, Title 5, Section 16.100 "Purchase by Minors Prohibited" of the City of St. Charles Municipal Code, Email from John McGuirk, Arraignment Form, Response Letter from Lavelle Law, Ltd.

Recommendation/Suggested Action *(briefly explain):*

Discussion Regarding Tobacco Citation and Hearing Notice for Rose Smoke N' Vapor, Inc, 902 Randall Road, Ste. B, St. Charles.

STATE OF ILLINOIS)
) SS
COUNTIES OF KANE AND DU PAGE)

**BEFORE THE LOCAL LIQUOR CONTROL COMMISSIONER OF
THE CITY OF ST. CHARLES, ILLINOIS**

IN THE MATTER OF THE TOBACCO)
LICENSE OF:)
) Case Number 2017-LC-05
Rose Smoke N' Vapor, Inc.)

CITATION AND NOTICE OF HEARING

TO: Rose Smoke N' Vapor
902 S. Randall Road, B
St. Charles, IL 60174

PLEASE TAKE NOTICE THAT on July 17, 2017 at the hour of 4:30 p.m., in the City Council Chambers at the St. Charles City Hall, 2 East Main Street, City of St. Charles, Illinois, the St. Charles Local Liquor Control Commission shall conduct a hearing pursuant to Chapter 5.08.320, 5.16.070 and 5.16.080 of the Municipal Code of the City of St. Charles and the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act 720 ILCS 675/1 et seq.

The purpose of said hearing shall be to determine whether the St. Charles Local Liquor Control Commissioner, pursuant to this authority, shall revoke or suspend the local cigarette license issued to you or impose a fine upon you, or both, by reason of the Complaint of Violation filed by the Chief of Police, James Keegan, a copy of which is attached.

AT WHICH TIME AND PLACE YOU MAY APPEAR AND DEFEND. YOU MAY BE REPRESENTED BY AN ATTORNEY IF YOU SO CHOOSE. ATTACHED HERETO IS AN ARRAIGNMENT FORM, WHICH IS INCORPORATED HEREIN. THE ARRAIGNMENT FORM SHOULD BE COMPLETED AND FILED WITH THE CITY CLERK WITHIN THREE (3) CALENDAR DAYS PRIOR TO THE HEARING. IF YOU FAIL TO FILE THE ARRAIGNMENT FORM WITHIN THREE (3) CALENDAR DAYS PRIOR TO THE HEARING AND IF YOU FAIL TO APPEAR AT THE HEARING, YOU WILL BE FOUND GUILTY OF THE VIOLATION BY DEFAULT AND THE ST. CHARLES LOCAL LIQUOR CONTROL COMMISSIONER WILL DETERMINE THE APPROPRIATE PENALTY.

YOU ARE ADVISED THAT IF A HEARING IS HELD AND YOU ARE FOUND GUILTY AFTER THE HEARING, THEN, IN ACCORDANCE WITH SECTION 5.16.180(E) OF THE ST. CHARLES MUNICIPAL CODE, YOU WILL BE REQUIRED TO REIMBURSE THE CITY FOR ANY AND ALL OUT OF POCKET EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, COURT REPORTER APPEARANCE FEES AND THE COST OF HAVING POLICE OFFICERS AND WITNESSES PRESENT TO TESTIFY. ANY AND ALL QUESTIONS MUST BE DIRECTED TO THE CITY ATTORNEY, JOHN McGUIRK, AT 630/513-8700 OR TO THE DEPUTY CITY CLERK, TRACEY CONTI, AT 630/377-4422.

DATED this 6th day of July, 2017.


Raymond Rogina
Local Liquor Control Commissioner
City of St. Charles

cc: Mark Koenen, City Administrator
Chief of Police, James Keegan

STATE OF ILLINOIS)
) SS
COUNTIES OF KANE AND DU PAGE)

**BEFORE THE LOCAL LIQUOR CONTROL COMMISSIONER OF
THE CITY OF ST. CHARLES, ILLINOIS**

IN THE MATTER OF THE)
TOBACCO LICENSE OF:)
) Case Number 2017-LC-05
Rose Smoke N' Vapor, Inc.)
902 S. Randall Road, B)
St. Charles, IL 60174)

COMPLAINT OF VIOLATION

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. On or about July 3, 2017, Rose Smoke N' Vapor, Inc., was operating under a Tobacco License issued by the City of St. Charles.

3. That on or about July 3, 2017, at approximately 2:23 p.m., the Licensee, Rose Smoke N' Vapor, Inc., by and through its employees, officers and/or agents committed the following violation of the St. Charles Tobacco Code:

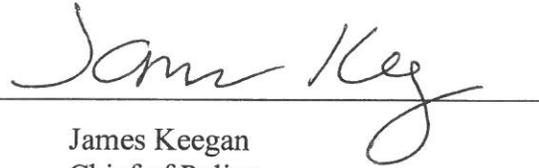
OFFENSE

Sold alternative nicotine product to a minor in violation of Section 5.16.070 of the St. Charles Municipal Code.

4. That the act detailed in Section 3 of this Complaint of Violation each are prohibited and are in violation of and contrary to Sections 5.16.070 of the St. Charles Municipal Code and the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act.

5. That the Licensee, Rose Smoke N' Vapor, Inc., 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 5.08.320, 5.16.170 and 5.16.180 of the St. Charles Municipal Code that the Local Liquor Control Commission, a/k/a the tobacco Commission, hold a hearing on this matter and take such action against Rose Smoke N' Vapor, Inc., as the Commission shall deem appropriate under the circumstances.

A handwritten signature in cursive script, reading "James Keegan", is written above a horizontal line.

James Keegan
Chief of Police
City of St. Charles, Illinois

John M. McGuirk
Attorney for the City of St. Charles
Hoscheit, McGuirk, McCracken
& Cuscaden, P.C.
1001 East Main Street, Suite G
St. Charles, IL 60174
630/513-8700



Case Report Summary



Print Date/Time: 07/05/2017 14:47
Login ID: kschult
Case Number: 2017-00014699

ST CHARLES POLICE DEPARTMENT
ORI Number: IL0451400

Case

Case Number: 2017-00014699
Location: 902 S RANDALL RD E
 SAINT CHARLES, IL 60174
Reporting Officer ID: 0051 - Mahan

Incident Type: 1715 SALE OF TOBACCO/MINORS
Occurred From: 07/03/2017 14:23
Occurred Thru: 07/03/2017 14:23
Disposition:
Disposition Date:
Reported Date: 07/03/2017 14:25 Monday

Offenses

No.	Group/ORI	Crime Code	Statute	Description	Counts
1	State	1715	720 ILCS 675.0/1	TOBACCO: UNLAWFUL SALE/PURCHASE UNDER 18 YEARS OLD	1
2	State	1715	720 ILCS 675.0/1	TOBACCO: UNLAWFUL SALE/PURCHASE UNDER 18 YEARS OLD	1

Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
SUSPECT/OFFENDER	1	BAIG, ROZINA	197 DUBLIN CT V1 SCHAUMBURG, IL 60194		WHITE	FEMALE	39
SUSPECT/OFFENDER	2				WHITE	MALE	14
SUSPECT/OFFENDER	3				WHITE	MALE	14

Arrests

Arrest No.	Name	Address	Date/Time	Type	Age
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Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
07/03/2017	RECOVERED	CURRENCY			U.S.C. (2) Twenty Dollar Bills, (2) Ten Dollar Bills		
07/03/2017	RECOVERED	OTHER PROPERTY			Eleaf, iJust2, stainless steel E-Cigarette Kit		

Vehicles

No.	Role	Vehicle Type	Year Make	Model	Color	License Plate	State
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OfficerID: emahan, Narrative**Unlawful Sale of Alternative Nicotine Products to Minors.**

Note: The charge listed in the Offenses section of this report is listed as: 720 ILCS 675/1 - SALE OF TOBACCO TO MINORS. The appropriate statute was not available in the options provided by the report writing software. The appropriate statute for this incident is: 720 ILCS 675/1.5 DISTRIBUTION OF ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE.

This case is associated with CR# 17-3225 and CR# 17-14371.

On 070317 at approximately 1415 hrs. I went to Rose Smoke N Vape, located at 902 S. Randall Rd, Unit E. My purpose for going there was to serve the business owner with a Citation and Notice of Hearing in relation to an earlier reported incident (Police CR# 17-14371, Liquor Control Commission Case # 2017-LC-04). That incident involved the unlawful sale of alternative nicotine product to a minor. An employee of the business had been cited for that sale. I was now citing the business owner in accordance with City of St. Charles Local Ordinance 5.16 - Tobacco. Under that ordinance, businesses engaged in selling this type of product are required to be licensed by the City and the Liquor Control Commission conducts hearings regarding sanctions to that licensee for alleged violations. At approximately 1415 hrs. I entered the store and met with the owner, Rozina Baig, whom I recognized from a previous similar encounter. I served Baig with the Citation and Notice of Hearing. The Complaint of Violation and Arraignment form. I was explaining the documents to Baig and answering questions when two young teenagers entered the store. Baig asked if they had I.D. when they stated they did not, she told them they had to leave the store. It should be noted that this store sells nothing but alternative nicotine products and devices, as well as some smokeless tobacco products. All items for sale in this business are prohibited for minors under age 18.

I exited the business at approximately 1423 hrs. and got in to my department issued vehicle which is unmarked. I was in plain clothes with a badge and holstered weapon on my belt. I checked a message on my phone prior to backing out of my parking space which was located directly in front of the building approximately 25 ft. north of the front door to this business. I then observed two male juveniles who looked to be between 12 to 14 years of age. They were standing on the sidewalk outside of the Taco Fresco located in the unit directly next door to (north of) Rose Smoke N Vape. I then saw one of the two juveniles, later identified as _____, put down his skateboard and enter Rose Smoke N Vape. I anticipated that Baig would likely immediately ask if he had and I.D. and the juvenile would then quickly exit the business. The juvenile did not quickly exit however. After approximately 1-2 minutes the juvenile exited with some type of product in his hand. He approached the other juvenile, still standing directly in front of my vehicle. The other juvenile, later identified as _____, held open his backpack while _____ placed the item in the backpack and the two began to walk away. I immediately exited my vehicle and approached the two. I identified myself as a police officer. I asked _____ how old he was and he said, "Like 15." I later learned he is 14 and will turn 15 in August. I asked whether he just purchased something inside and he said that he had. I asked _____ to remove the item from his backpack which he did. It was an unopened Eleaf, iJust2, E-cigarette kit. This is a device that provides for the ingestion of an alternative nicotine product into the body. Sale of this device to a person under 18 and possession of it by a person under 18 are prohibited by state statute and city ordinance. I asked how much he had paid for the device and he stated that he paid \$60.00. _____ and _____ then explained to me that _____ made the purchase for _____. He did so because the two of them thought that _____ looked the older of the two. Both are 14 years of age.

I called for an additional unit to respond to this location. Ofc. Runkle and Ofc. Squillo then arrived. They remained with _____ and _____ while I reentered Rose Smoke N Vape. I confronted Baig about selling to a minor right after I had served her with notice of a violation and prior to my even leaving the property. I showed the E-Cigarette Kit and she said that she thought he was 18. I asked Ofc. Runkle to have _____ walk to the front door of the business where we could see him. He did so. I then asked if she thought he looked 18. She then stated that he had been in the store on a previous day with someone who was over 18 so she thought he was also. I spoke to her at length about the need to card anyone who looks like they may be any age close to 18. I explained that a safe business practice would be to card anyone who looks younger than 30 years of age. She continued to state that she thought he was 18 because he had been in before with someone whom she had carded that was over 18. Thinking he was 18 she did not card him today. I advised her that I would be issuing her a state citation for selling to a minor and that she could anticipate that I would also be returning with another notice of hearing before the Liquor Control Commission.

I asked Baig for the \$60.00 dollars that the juvenile had given her for the device. She went to the register and provided me with (2) twenties and (2) tens. I explained to her that I would be confiscating both the money and the device as evidence.

I met again with the juveniles I provided them my contact information, instructed them to return directly home, and to have a parent contact me. _____'s mother called me soon after. I arranged to meet with her and her son on 070617 for purposes of completing a formal station adjustment form. I have not heard from _____'s parents but he did explain that he was leaving town on 070317. I will attempt to contact his parents.

The device and money were entered in to property control as evidence.

Pending Investigation

EM346

5.16.020 – Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

1. “Alternative nicotine products” means a product of device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means (commonly known as e-cigarettes). Alternative tobacco or nicotine products includes synthetic tobacco products which are intended to replicate tobacco and tobacco products. Alternative nicotine products excludes “tobacco products” as defined in this section and any product approved by the United States food and drug administration as a nontobacco product for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
2. “Hookah Lounge” means an establishment where patrons share shisha (flavored tobacco) from a communal hookah or nargile which is placed at each table. Typically a disposable mouthpiece is provided for each user for hygiene reasons. Some Hookah Bars offer traditional shisha or herbal shisha (contains no tobacco/nicotine) but herbs produce tar when they burn and for the purposes of this ordinance, shall be treated the same as tobacco/alternative nicotine products in reference to their use and/or sale.
3. “Retail tobacco dealer” means any person selling, offering for sale, exposing for sale or keeping with the intention of selling or exchanging at retail, tobacco products, alternative nicotine products or tobacco accessories in the city. “Retail” means the sale of commodities in small quantities directly to the ultimate consumer. For example: The sale of tobacco in a grocery store, convenience store, gas station, tavern, restaurant, billiard or bowling alley.
4. “Tobacco Accessories” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.
5. “Tobacco and tobacco products” means cigarettes cigars or tobacco intended for human use, including loose tobacco, pipe tobacco, chewing tobacco and snuff.
6. “Tobacco product sample” means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotional purposes. Examples include tobacco shop, e-cigarette shops or cigar shop.
7. “Tobacco product sampler” means any person engaged in the business of tobacco product sampling, alternative nicotine or other than a retail tobacco dealer.
8. “Tobacco product sampling” means the distribution of tobacco product samples to members of the general public.
9. “Vending machine” means any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.
10. “Wholesale tobacco dealer” means any person making, manufacturing of jobbing cigars, or selling, offering for sale, exposing for sale, or keeping with the intention of selling or exchanging or delivering at wholesale, any tobacco, snuff, cigars, cigarettes or cigarette papers, including leaf tobacco, alternative nicotine products or any preparations containing tobacco. “Wholesale” means the sale of commodities in quantity usually for resale (as by a retail merchant); no sales directly to the ultimate consumer.

([2014-M-41](#) [1]: §1; [1991-M-37](#) [2]: §1)

5.16.100 – Purchase by minors prohibited

5.16.100 – Purchase by minors prohibited

It shall be unlawful for any person under the age of 18 years to purchase tobacco, tobacco products or alternative nicotine products, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing tobacco, tobacco products or alternative nicotine products.

Conti, Tracey

Subject: FW: Rose Smoke N' Vapor, Inc.
Attachments: Arraignment Forms.pdf

From: jmc@hmcpc.com
Sent: Friday, July 14, 2017 10:43 AM
To: Koenen, Mark
Cc: Conti, Tracey
Subject: FW: Rose Smoke N' Vapor, Inc.

I received the attached. I requested that he sign the second form and return. In any event he will be at the hearing on Monday and can confirm that they are admitting to both violations.

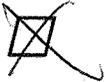
John M. McGuirk
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.
1001 East Main Street, Suite G
St. Charles, IL 60174
(630) 513-8700 - Phone
(630) 513-8799 - Fax
jmc@hmcpc.com

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ARRAIGNMENT FORM

I, Joseph Vito ^{and attorney}, as agent for ROSE SMOKE N' VAPOR, INC., being a licensee charged with a violation of Chapter 5.16 of the Municipal Code of the City of St. Charles and the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, et seq. at 902 S. Randall Road, B, St. Charles, Illinois 60174, do hereby:



Admit the allegations set forth in the Complaint, but request a hearing in mitigation in which I will be given an opportunity to present evidence in support of my position to minimize any penalty.



Admit the allegations set forth in the Complaint. I do not request a mitigation hearing.



Deny the allegations set forth in the Complaint. I request a hearing.

Rose Smoke N' Vapor, Inc.

Signature:

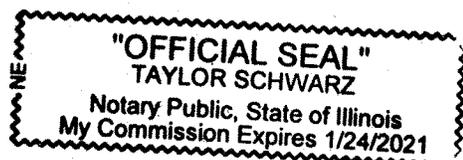
By: Joseph Vito

Date: 7/13/17

Subscribed and sworn to before me

This 13 day of July, 2017.

Taylor Schwarz
Notary Public



Form can be faxed to 630-377-6034
or e-mailed to the attention of Tracey Conti
at tconti@stcharlesil.gov
Hard copy must follow by U.S. Mail

ARRAIGNMENT FORM

I, Joseph Vito, ^{and attorney} as agent for ROSE SMOKE N' VAPOR, INC., being a licensee charged with a violation of Chapter 5.16 of the Municipal Code of the City of St. Charles and the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, et seq. at 902 S. Randall Road, B, St. Charles, Illinois 60174, do hereby:

- Admit the allegations set forth in the Complaint, but request a hearing in mitigation in which I will be given an opportunity to present evidence in support of my position to minimize any penalty.
- Admit the allegations set forth in the Complaint. I do not request a mitigation hearing.
- Deny the allegations set forth in the Complaint. I request a hearing.

Rose Smoke N' Vapor, Inc.

Signature:

By: Joseph Vito

Date: 7/13/17

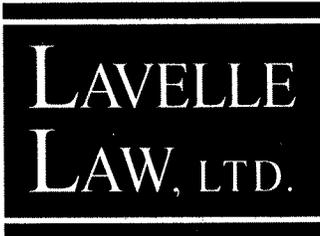
Subscribed and sworn to before me

This 13 day of July, 2017.

Taylor Schwarz
Notary Public



Form can be faxed to 630-377-6034
or e-mailed to the attention of Tracey Conti
at tconti@stcharlesil.gov
Hard copy must follow by U.S. Mail



C H I C A G O

180 NORTH LASALLE STREET
SUITE 2503
CHICAGO, ILLINOIS 60601
TELEPHONE: 312-332-7555
FACSIMILE: 312-332-4611

S C H A U M B U R G

1933 NORTH MEACHAM ROAD
SUITE 600
SCHAUMBURG, ILLINOIS 60173
TELEPHONE: 847-705-7555
FACSIMILE: 847-705-9960

July 13, 2017

WRITER'S DIRECT LINE: 224-836-6174

WRITER'S E-MAIL: jvito@lavellelaw.com

WRITER'S DIRECT FAX: 224-836-6175

SENT VIA EMAIL: jmc@hmcpc.com

Re: Rose Smoke N' Vapor, Inc.

Dear John:

It was very nice speaking with you on the phone. To follow up on our conversation, the following is my clients' position as to the violations.

As to the first violation, my clients believe there is a mistake. However, in an effort to bring about an amicable resolution, they are willing to admit the allegations in the complaint. For purposes of mitigation, the product that was sold did not contain any nicotine, but is simply a flavored oil for fruity-smelling vapor. No nicotine can be ingested from this product. Since the incident, my clients' policy is to check the ID of anyone purchasing any of their products.

As to the second violation, my clients understand that the person who was sold the dispenser should have been made to show ID before they purchased the product. Therefore, they admit to the allegations in the complaint. For purposes of mitigation, the individual sold the dispenser usually comes into the store with individuals that are not under age, and that can buy my clients' products. Because the individual, while never having bought a product before the incident, frequented their store often with individuals who were over 18, a store employee assumed he was over the age of 18. As noted, my client knows that the employee should have asked for ID and that the transaction was in violation of the Code. There was no intention, however, to violate the code.

Please note that all employees have been informed that the store has a strict policy on checking every customer's ID. My clients will admit guilt and wish to mitigate any penalties the City might impose.

I will be able to attend the hearing on July 17th, but due to my obligations to the Village Council of Wheeling I kindly request that this case be put on the call as early as possible. Thank you in advance for your consideration, I look forward to meeting you on Monday.

Sincerely,
LAVELLE LAW, LTD.

Joseph V. Vito
Attorney at Law