

MINUTES
GOVERNMENT OPERATIONS COMMITTEE
ALD. TODD BANCROFT, CHAIR
MONDAY, APRIL 16, 2018

1. Call to Order

The meeting was convened by Chrmn. Bancroft at 7:44 pm.

2. Roll Call

Members Present: Chrmn. Bancroft, Ald. Silkaitis, Payleitner, Lemke, Turner, Gaugel, Vitek, Bessner, Lewis, and Stellato

Absent: None

3. Omnibus Vote

- a. Budget Revisions – March, 2018

Motion by Ald. Turner, second by Gaugel to approve the omnibus item.

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

4. Police Department

- a. **Recommendation to Approve a Proposal for a New Class E-4 Temporary Liquor License for a Special Event, “Unwind Wednesdays” to be held on the 1st Street Plaza.**

Chief Keegan: This is the second annual event of Unwind Wednesdays. McNally’s Pub, Puebla Mexican Restaurant and Pizzeria Neo have again partnered for a total of 14 events to be held on Wednesday’s to coincide with STC Live, starting June 6 running through September. Last year we asked for the same amount of events, it was called back at the Committee/Council level and due to the weather we came back again to ask for some additional dates. This did advance from Liquor Control Commission with a stipulation that the hours of the event be from 5pm – 9pm.

Ald. Lewis: I’m curious, how is the service going to work? Last year you had wrist bands. Will there be wrist bands this year?

Colm Headly: Yes

Ald. Lewis: Do I have to come inside to purchase and then go outside, or can I sit outside and have my order taken?

Colm Headly: Yes, we can serve outside.

Ald. Lewis: You’ll do both. How do I get my wristband?

Colm Headly: If you sit on the patio you’ll have a wristband.

Ald. Lewis: I have to go inside to get my wristband.

Colm Headly: Correct, and we have security posted back there at our patio.

Ald. Lewis: The other restaurants as well. That's where I was confused. Just sitting outside someone's not going to come out and take my order and deliver drinks to me. The same with food; last year there were small plates that could be ordered. Chief, I spoke with you about changing the word dusk.

Chief Keegan: Ald. Lewis at the Liquor Commission earlier this evening we did specify that dusk would be defined as 9 pm.

Ald. Lewis: That's when everything would be cleaned up.

Chief Keegan: Correct, and consumption would cease in the Plaza at 9 pm.

Motion by Ald. Turner, second by Stellato to Recommend the Approval of a Proposal for a New Class E-4 Temporary Liquor License for a Special Event, "Unwind Wednesdays" to be held on the 1st Street Plaza.

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

b. Recommendation to approve a Proposal for a New G2 Liquor License Application for The Pride Store, LLC Located at 1825 Lincoln Highway, St. Charles. (Octane 93 Nano-brewery)

Chrmn. Bancroft: Let the record show that Ald. Gaugel has recused himself.

Chief Keegan: This is for Octane 93 Nano-brewery. This advanced forward from the Liquor Control Commission earlier this evening. Chris Pecket and Guy Morgano are here from the Pride Group. We've brought this to Liquor Commission and Committee on 2 occasions. The first was to codify the G2 concept which is a site license. In that site license, which was approved at the City Council level, similar to what's been done at the Hotel Baker, Pheasant Run, Q-Center, the entire license would be a licensed premise with businesses/service points all operating under that one particular roof. The G2 was passed by City Council and we additionally took the concept of the Nano-brewery in front of Liquor and Committee where it received some favorable recommendations to advance. There were a few issues that had to be looked at; one was the zoning concern of the City Council which has been addressed. There were also some questions pertaining to our liquor ordinance and the 100 ft. rule as it relates to the daycare behind the business in question. That too was looked at by Community and Economic Development and it was ruled that the business location to the daycare exceeded the 100 ft. rule.

Currently, there is a B license issued to the Urban Counter, an A license for the Pride Liquor Store, and the far western part of the strip mall was originally looked at for an Italian Deli, that concept never materialized. The petitioner has come before us seeking the site license. The building has one set of bathrooms, cross access shared by all three components inside the one address. They share a common point of sale system and the hours of operation mirror each other.

Motion by Ald. Stellato, second by Vitek to recommend approval of a Proposal for a New G2 Liquor License Application for the Pride Store, LLC Located at 1825 Lincoln Highway, St. Charles. (Octane 93 Nano-brewery)

Roll Call: Ayes: Silkaitis, Payleitner, Lemke, Turner, Vitek, Bessner, Stellato; Nays: Lewis.
Chrmn. Bancroft did not vote as Chair. **Motion Carried.**

c. Recommendation to approve a Late-Night Permit for the RAM Restaurant Group/dba “The Grandstander” located 11 N. 3rd Street (Class B).

Chief Keegan: This advanced from the Liquor Control Commission. There has been some discussion regarding this particular topic. The RAM Restaurant Group opened in 2015 at the building in question operating with a B license as Abby’s. They were very successful in the first year, but took a 60 day hiatus, then moved into the adjoining space. In October of 2017 Mr. Mondi had some health issues, the business as we know as Abby’s ceased operations for a short while. He wrote a letter to the Liquor Commissioner asking that his license remain intact; he submitted a renewal application for the coming licensing year with the same LLC which is RAM Restaurant Group, but is dba changed to the Grandstander. Mr. Mondi would like to partner with Chef David who owns and operates the Finery. The Grandstander concept would advance to St. Charles from Geneva. Their current license, a class B license, is until midnight. The late night permit would have to be enacted by City Council. That’s why I’m before you this evening.

Mayor Rogina: Last October Mr. Mondi closed Abby’s due to health reasons. At the end of January Rob sent me a request to extend his liquor license. On February 6, 2018, I granted the extension per section 5.08.150. I consulted with legal counsel asking if I exceeded in any way as Liquor Commissioner my authority under 5.08.150. I would also make note that in the paragraph 5.08.150, for good cause is clearly enumerated. My thinking was pretty simple; Rob Mondi has proved himself. They will do a fine job there; Mr. Mondi and Chef David are here and I’m sure they will respond to any and all of your questions. At the end of this conversation/questions staff will take your recommendation from you and move forward a late night permit for this B license. I think it’s interesting to note; this decision you’re going to make, if in fact it is controversial, and I don’t think it is you will have 3 weeks to ponder this and make a decision. There is ample time to digest, analyze and make a final decision.

Atty. McGuirk: I received a number of requests via email from some members of the Council asking for a letter of opinion with respect to 5.08.150. It wasn’t terribly specific to what aspect of that section, but obviously it relates to this request from the RAM Restaurant Group. There are my observations; 5.08.150 provides for the extension of liquor licenses. I don’t know if we’ve ever dealt with that as a Council before. It grants authority to the Liquor Commissioner to extend liquor licenses when a written request is received. It’s important to note that an extension granted does not require the advice or consent of the Council. That’s in the purview and authority of the Liquor Commissioner. The extension is not something that runs through the Liquor Commission. The licensee RAM Restaurant Group, Inc. requested a license extension in writing on January 31, 2018. RAM Restaurant Group, Inc. is presently licensed under a B classification. On February 6, 2018, the Liquor Commissioner granted an extension of the B license until April 30, 2018. My opinion is as RAM stands here today before you they have a class B license. I think the rational you saw in the email from the Liquor Commissioner relating to his interpretation 5.08.150. In his in opinion and I don’t disagree the paragraph as to the circumstances under which the extensions are granted is ambiguous. If you read it thoroughly and it takes some time, the first part of the section talks about extensions and seems to indicate there is written approval required in advance. The second part of that paragraph which the Liquor Commissioner has relied upon doesn’t reference any time frame with respect to granting an extension. In my opinion the ambiguity of 5.08.150 and the Commissioners reliance on the second portion of the paragraph is reasonable. It’s his purview; it’s his authority to deal with extensions. I think he acted reasonably in

this case.

It's also my opinion that because the extension has been granted until April 30, 2018, any issue with respect to technical defects regarding notice, timeframe etc. have been waived. This is sort of the background for the late night permit. This is not something you're making any decisions on today, it's my opinion that the extensions been granted, the license is in effect, and I think that's what I was asked to do.

Ald. Payleitner: I'm excited you're back. Rob the plan looks fabulous. I'm very excited; however I think you need a new license. Regarding Atty. McGuirk's statement, I agree with everything you said except I'm concerned that by the time the request was made the license was already forfeited.

Atty. McGuirk: I understand your concern. I don't agree.

Ald. Payleitner: It says 30 consecutive days from the closure. You don't think that's an issue?

Atty. McGuirk: I think the provision that requires that sets out the circumstances is ambiguous. The first of it seems to say you need it in advance and the second part doesn't have anything relating to the timing of the request. The fact is the Liquor Commissioner did extend the license.

Ald. Payleitner: He did that in February, 2018.

Atty. McGuirk: He did.

Ald. Payleitner: I saw that the license was forfeited November 12, 2018. I agree with you regarding the ambiguity of the circumstances, but it says, other than temporary for a period of not to exceed 30 successive days without prior written approval the liquor license shall be deemed forfeited. That seems clear to me. There is a 30 day period when they can request the extension.

Atty. McGuirk: I think the Liquor Commissioner laid it out pretty well in his memo, the red highlighted portion shows the difference between the first half and the second half of that provision. Again, I agree with his interpretation. I think when you have an ambiguous clause that is something that has a possibility of multiple meanings the reasonable standard is what's applied. I think that's what applies here.

Ald. Payleitner: I think that as of November 12, 2018 the license was forfeited due to inaction. I have concerns about allowing the license to move forward in an unlawful manner. I'm not sure that was addressed, 5.08.090, when this was added on to the ordinance in 2012 it was a lot of work. We were trying to make sure that when someone has a business model and a site plan and we approve the license that all is attached to the license. This is to make sure that someone who was approved for a license because they are going to have a white table cloth Italian restaurant didn't change into a Club Bar by the time they opened. We diligently worked on getting this addition into the ordinance. My question to you is when is a license approved?

Atty. McGuirk: It's approved when this Council approves it.

Ald. Payleitner: When Mr. Mondy's license was approved attached to it was the floorplan for Abby's. To read right from the ordinance it says: It shall be unlawful for any Class B licensee to operate and or maintain licensed premises inconsistent with the approved site drawing.

Atty. McGuirk: I don't think they have been operating inconsistent with their site drawing. From what I understand is the renewal license contains this new site plan that corresponds to their new concept. I think they are conforming to the ordinance.

Ald. Payleitner: That isn't what was approved. Renewals are different than license approvals, correct? You assume that the approved license will be what is renewed.

Atty. McGuirk: I know they have to have a site plan, and they have a site plan.

Ald. Payleitner: They have a different site plan than what was approved on their license that we're saying is the same license. If they got a new license it would be no problem. The license that we have legal opinion on and are moving forward with has a different site plan than the license that was approved. According to our ordinance it would be unlawful for them to conduct business in any other manner than what the approved site drawing was.

Atty. McGuirk: The renewal license application has a new site plan, and doesn't have to come back to the Council.

Ald. Payleitner: But that wasn't approved.

Atty. McGuirk: It doesn't have to come back to the Council.

Ald. Payleitner: But it has to be approved. It says attached to the approved license. That's what I'm asking. The license that was approved was for Abby's, was that site plan, and that's not what's moving forward with the renewal. It's a different site plan and model totally. It went from a breakfast place that closes at 2 pm to a sports bar closing at 1am. It couldn't be any more different. How is it not unlawful?

Mayor Rogina: I think Atty. McGuirk has made it very clear the man has a class B license. I've extended the class B license. He was very clear in his request that looking at moving, modifying and updating by market standards his license.

Ald. Payleitner: No sir.

Mayor Rogina: Alderman, we disagree. It's okay to disagree.

Ald. Payleitner: He's not updating, he's changing, and that's different.

Mayor Rogina: I agreed that he has a right to update/modify his license. He's doing such and presenting that document to you. Earlier I said you have 3 weeks, the whole council, in the aggregate, have 3 weeks to look at this and decide if it's something we want in our community. That's your responsibility.

Ald. Payleitner: I want this in my community. I'm deciding to approve a late night permit on what I consider a forfeited license, and what I consider an unlawful future operation under a different site plan.

Mayor Rogina: That is your right to interpret it that way. I don't know what more we can do but provide this council legal opinion, all the documentation and tell you to make the decision. If as a member of the council you feel there is something unlawful here you'll do what you have to do. If you believe that this business here is operating under the ordinance of the City of St. Charles in an improper manner; you'll vote accordingly on that as well.

Ald. Stellato: I hear what Ald. Payleitner is saying. The ambiguity we're talking about; no matter what happens here we need to adjust that going forward. I understand the legal concern we have right now. Anytime there is an ambiguity that equates to litigation if we're not careful. We have to be clear about what we want to do going forward. The site plan came up years ago when someone did a renovation on a restaurant or bar, and the site plan was changed, but not approved because we didn't have that ordinance in place. We have to look at the approval process where renovations are concerned.

Ald. Bancroft: If there is a way to amend the site plan with an existing license.

Ald. Silkaitis: Mr. McGuirk, in your legal opinion, what is being done is legal. Is that your opinion.

Atty. McGuirk: My opinion is what's being done conforms to the ordinance.

Ald. Silkaitis: I brought this up in liquor commission, the site plan difference. I don't necessarily agree with what's coming up, but I'm going to have to go with what our legal staff says. We need to put something in the ordinance.

Ald. Payleitner: It says it clear as day right here. What should this say Mr. McGuirk?

Atty. McGuirk: I think there is a provision in the ordinance that allows a change in a site plan on approval of the Liquor Commissioner.

Ald. Lemke: Have we previously allowed businesses to change, for example replacing bar stools with tables, and rejected a license or renewal midstream as a result of that?

Ald. Turner: You get overly strict. That means that if someone decides to change the layout or add a couple tables they have to come back here with a new site plan? There has to be some flexibility.

Ald. Payleitner: I agree. You did that, Mr. Mondy, when you expanded. There was no issue. Certainly something as simple as parking is going to be a challenge with your new plan. You're going to be sharing parking with Alibi and Filling Station, before you weren't. It's not just a remodel we're talking about.

Ald. Lewis: I'd like to see a new license issued. I agree with a lot of the comments being made here. It's not that we don't want to see the organization here; the issue is if you should have a new license or renew the license. I still think the best way to go is to apply for a new license with a late night permit.

Ald. Vitek: At the Liquor Commission earlier; when legal counsel spoke it helped me to better

understand, and I understand everyone's concerns, but I also think our job here is to either approve or not approve the late night permit. That's what I feel I'm charged with here tonight. Both these gentlemen have a very good reputation in the City, both are in good standing. I take the business friendly approach, not breaking ordinances and rules, not to make these gentlemen jump through anymore hoops to be able to start a good business that's been successful in Geneva. In my opinion it can only enhance our downtown community. I think we're here tonight to approve the late night permit.

Ald. Payleitner: I don't disagree with the late night permit. I disagree that we're adding a late night permit to a forfeited license. I want them here. That's not the question. I know what we went through to write the ordinance and I don't know how anymore clear it could be and now it's ambiguous. I don't understand.

Motion by Ald. Turner, second by Vitek to recommend the approval of a Late-Night Permit for the RAM Restaurant Group/dba "The Grandstander" located 11 N. 3rd Street (Class B).

Roll Call: Ayes: Silkaitis, Lemke, Turner, Gaugel, Vitek, Bessner, Stellato; Nays: Payleitner, Lewis. Chrmn. Bancroft did not vote as Chair. **Motion Carried.**

Ald. Silkaitis: I'd like this group to direct Liquor Commission to look into this issue. I don't want to see this come up again. We need to have some boundaries as to what is an existing license, what should be converted to a new license application.

Motion by Ald. Stellato, second by Lemke to direct staff to research and recommend appropriate ordinance changes where the ambiguity of this issue is concerned.

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

Ald. Payleitner: The purpose of the site plan, in the spirit of the law, was to prevent a business changing in mid-stream.

Chair. Bancroft: You've made your point. There are many different things to look at is that the renewal is being submitted as the current concept. If there weren't other considerations with respect to whether this license stays in place or is granted it wouldn't be an issue, but there are, we should look at the ordinance. To me from a renewal standpoint, there's nothing that hasn't been upfront. I think that if we need to look at some ambiguity in the ordinance we've already directed staff to do that.

5. Finance Department

- a. **Recommendation to Approve an Ordinance Amending Title 13, "Public Utilities, Chapter 13.08 "Electricity" of the St. Charles Municipal Code to Allow for Changes in the Rate Structure for the Electric Utility and to Provide Clarification to Other Sections of Chapter 13.08.**

Chris: The 3 finance related items this evening are all kind of related. Enclosed in the packet tonight are the rate structure change ordinances for the utilities. The ordinances reflect the amounts and are consistent with the amounts and the projections included in the FY 18/19 budget passed earlier this evening. They are also consistent with the amounts and impacts discussed at the various meetings,

hearings, and discussions we've had on the budget. I'd like to reiterate that even considering the changes to the rate structure we do remain the lowest cost provider of utility services in the tri-city area. The first item is the electric ordinance. In addition to the rate structure changes it cleans up the code to reflect our current practice for coincidental demand billing for rate 3 and 5 customer classes. Additionally, there is language to reflect in the ordinance, that there is no interest credit to deposits that customers make for collection purposes.

Motion by Ald. Stellato, second by Turner to recommend approval of an Ordinance Amending Title 13, "Public Utilities, Chapter 13.08 "Electricity" of the St. Charles Municipal Code to Allow for Changes in the Rate Structure for the Electric Utility and to Provide Clarification to Other Sections of Chapter 13.08.

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

b. Recommendation to Approve an Ordinance Amending Title 13, "Public Utilities, Chapter 13.16 "Water" of the St. Charles Municipal Code to Allow for Changes in the Rate Structure for the Water Utility and to Provide Clarification to Section 13.16.187.

Chris: Similarly, item b. reflects the rate changes for the water utility. It also cleans up the code to reflect that the city does not credit interest to deposit accounts for customers.

Motion by Ald. Stellato, second by Silkaitis to recommend approval of an Ordinance Amending Title 13, "Public Utilities, Chapter 13.16 "Water" of the St. Charles Municipal Code to Allow for Changes in the Rate Structure for the Water Utility and to Provide Clarification to Section 13.16.187.

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

c. Recommendation to Approve an Ordinance Amending Title 13, "Public Utilities, Chapter 13.12 "Sewers" of the St. Charles Municipal Code to Allow for Changes in the Rate Structure for the Sewer Utility and to Provide Clarification to Section 13.12.960.

Chris: Lastly, the wastewater ordinance, same clean-up language in the code regarding the deposits.

Motion by Ald. Stellato, second by Gaugel to recommend approval of an Ordinance Amending Title 13, "Public Utilities, Chapter 13.12 "Sewers" of the St. Charles Municipal Code to Allow for Changes in the Rate Structure for the Sewer Utility and to Provide Clarification to Section 13.12.960.

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

Motion by Ald. Lemke second by Ald. Gaugel to move into executive session to discuss property acquisition under 5 ILCS 120/2(c)(5) at 8:22 pm.

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

Motion by Ald. Silkaitis second by Gaugel to come out of executive session at 8:48 pm.

6. 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)

7. Additional Items from Mayor, Council, Staff, or Citizens.

8. Adjournment

Motion by Ald. Silkaitis, second by Turner adjourn the meeting at 8:49 pm