

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5

Title:	Discussion regarding Citation and Hearing Notices for Pizzeria Neo
Presenter:	Christopher Minick, Director of Finance

Meeting: Liquor Control Commission Date: February 19, 2019

Proposed Cost: \$ Budgeted Amount: \$ Not Budgeted: **Executive Summary (if not budgeted please explain):**

The City Council has initiated a tax of 3% of the sales price on all alcoholic beverages and package goods sold in the City of St. Charles. The establishment shall collect such tax and remit it to the City on a monthly basis. Filing of the tax return and payment of the tax liability is due before the end of the month succeeding the month in which the sale occurred (ie, tax collections on January beverage sales are to be paid by close of business on February 28.) These obligations are spelled out in sections 3.42.030 through 3.42.080 of the St. Charles Municipal Code.

Pizzeria Neo has a repeated history of significantly late payments. In the past 15 months dating back to November of 2017, Pizzeria Neo has filed returns and paid late 7 times. Additionally, the November 2018 liability was paid with a check that was subsequently returned as Non-Sufficient Funds (NSF). A complaint of violation has been served on Pizzeria Neo for chronic late payment of the Alcohol Tax liability. The repeated late payments result in considerable staff time and effort to collect the liabilities and Pizzeria Neo is well aware of the obligation to file the returns and remit payment in accordance with the Code. Staff has had repeated communication with Pizzeria Neo to collect amounts due and reminding the establishment of the filing and payment obligations.

The Liquor Control Commissioner has the authority to impose penalties on Pizzeria Neo as a liquor license holder for violations of City Ordinances after a due process hearing (Section 5.08.320 of the City's Municipal Code). Penalties may range from levying a fine up to and including suspension or revocation of the entity's liquor license. Staff is requesting that the LCC begin the hearing process to determine if further penalties are warranted in this case.

A payment history is attached. At the time of service of the complaint (February 8), November 2018's liability had been paid with an NSF check and was outstanding and December's liability had not yet been paid. Payment was made on February 12 and Pizzeria Neo is current in liabilities as of this writing (February 13). In addition to paying its past due liabilities, Pizzeria Neo also paid the January, 2019 liability which is not due until February 28 (they paid January's liability early.)

Staff will be present to make a brief presentation and answer questions.

Attachments (please list):

Citation and Notice of Hearing
Payment Histories

Recommendation/Suggested Action (briefly explain):

Discussion Regarding Citation and Hearing Notices for Tap House Grill and Pizzeria Neo

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

COPY

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

IN THE MATTER OF THE LIQUOR)
LICENSE OF:)
) Case Number 2019-LC-01
Pizzeria Neo, Inc.)

NOTICE OF HEARING

TO: Pizzeria Neo, Inc.
31 S. 1st Street
St. Charles, IL 60174

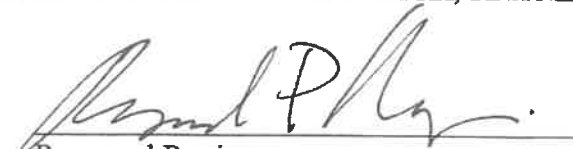
PLEASE TAKE NOTICE THAT on February 19, 2019 at the hour of 4:30 p.m., in the City Council Chambers at the St. Charles City Hall, 2 East Main Street, City of St. Charles, Illinois, the St. Charles Local Liquor Control Commission shall conduct a hearing pursuant to Chapter 5.08.270 of the Municipal Code of the City of St. Charles and the Liquor Control Act of 1934, 235 ILCS 5/1-1 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 liquor license issued to you or impose a fine upon you, or both, by reason, 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. IF YOU FAIL TO FILE THE ARRAIGNMENT FORM WITHIN SEVEN (7) 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 5.08.320(B) 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 IN ACCORDANCE WITH SECTION 5.08.320(B). ANY AND ALL QUESTIONS MUST BE DIRECTED TO THE CITY ATTORNEY, JOHN McGUIRK, AT 630/513-8700 OR TO THE DEPUTY CITY CLERK, TINA NILES, AT 630/377-4422.

DATED this 8th day of February, 2019.


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)

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) Case Number: 2019-LC-01
Pizzeria Neo, Inc.)
31 S. 1st Street)
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. In the months of November, 2018, December, 2018 and January 2019, the Licensee, Pizzeria Neo, Inc., by and through its employees, officers and/or agents, committed the following violations of the St. Charles Liquor Code:

OFFENSES

(Count I)

Failed to pay alcohol tax in the amount of \$1,519.44 for the tax period ending on November 30, 2018, and presented an insufficient funds check in the amount of \$1,519.44.

(Count II)

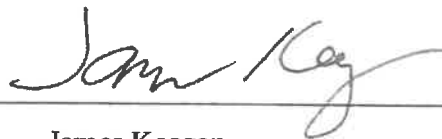
Failed to pay alcohol tax for the period ending on December 30, 2018, which was due on January 31, 2019.

3. At the time of the above violations, Pizzeria Neo, Inc. was operating was operating under a Class B liquor license issued by the City of St. Charles.

4. That the acts detailed in Section 2 and 3 of this Complaint of Violation each are prohibited and are in violation of and contrary to Section 5.08.270 (R,S) of the St. Charles Municipal Code and the Liquor Control Act of 1934 and in violation of Section 3.42.090 of the Alcohol Tax Ordinance.

5. That the Licensee, Pizzeria Neo, 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 of the St. Charles Municipal Code that the Local Liquor Control Commission hold a hearing on this matter and take such action against Pizzeria Neo, Inc. as the Commissioner shall deem appropriate under the circumstances.



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

copy

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

CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.



James Keegan, Chief of Police

SUBSCRIBED AND SWORN TO
before me this 8th day of February, 2019.



NOTARY PUBLIC



ARRAIGNMENT FORM

I, GUY SORZENTINO, as agent for Pizzeria Neo, Inc., being a licensee charged with a violation of Chapter 5.08 of the Municipal Code of the City of St. Charles and the Liquor Control Act of 1934, 235 ILCS 5/1-1 et seq. at 31 S. 1st Street, St. Charles, Illinois 60174, do hereby enter a plea of:



Guilty, 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.



Guilty, I do not request a hearing.



Not Guilty. I request a hearing.

Pizzeria Neo, Inc.

Signature:

By: _____

Date: _____

2/10/19

Subscribed and sworn to before me

This 11 day of February, 2019

Tracey R. Conti
Notary Public



Form can be faxed to 630/377-4440
or e-mailed to the attention of Tracy Conti
at tconti@stcharlesil.gov
Hard copy must follow by U.S. Mail

Pizzeria Neo Inc

Gross Sales Year and Month	Due Date of Alcohol Tax Return	Received Payment Date of Alcohol Tax Return	Days Late
2017 November	12/31/2017	01/03/2018	-3
2017 December	1/31/2018	02/26/2018	-26
2018 January	2/28/2018	03/01/2018	-1
2018 February	3/31/2018	04/02/2018	-2
2018 March	4/30/2018	04/30/2018	0
2018 April	5/31/2018	06/01/2018	-1
2018 May	6/30/2018	07/02/2018	-2
2018 June	7/31/2018	08/02/2018	-2
2018 July	8/31/2018	10/12/2018	-42
2018 August	9/30/2018	10/12/2018	-12
2018 September	10/31/2018	12/13/2018	-43
2018 October	11/30/2018	12/13/2018	-13
2018 November	12/31/2018	02/12/2019	-43
2018 December	1/31/2019	02/12/2019	-12
2019 January	2/28/2019	02/12/2019	16

5 day "Grace" period given