

**MINUTES**  
**CITY OF ST. CHARLES, IL**  
**LIQUOR CONTROL COMMISSION MEETING**  
**MONDAY, SEPTEMBER 16, 2013**

**1. Opening of Meeting**

The meeting was convened by Liquor Commissioner Rogina at 4:30 p.m.

**2. Roll Call**

**Members Present:** Liquor Commissioner Rogina, Chuck Amenta, Ald. Payleitner, and Ald. Lewis,

**Members Absent:** Robert Ghem

**Others Present:** Chief Lamkin, Mark Koenen and Atty. John McGuirk, and Tina Nilles

**3. Motion to accept and place on file minutes of the Liquor Control Commission meeting held on August 19, 2013.**

Motion by Ald. Payleitner, second by Mr. Amenta to approve minutes of the August 13, 2013 Liquor Control Commission Meeting.

**Voice Vote:** Ayes: Unanimous, Nays: None, Absent: Ghem. Chrmn. Rogina did not vote as chair. **Motion carried.**

**4. Presentation of a request from Lundeen's Liquors to offer drive-thru window service at 1315 W Main Street.**

**Chrmn. Rogina:** Members of this Commission have reviewed all pertinent information leading up to this presentation. The only issue for our review that is pertinent here today is your request to offer drive-thru service at your new location, which has been approved at City Council, at 1315 W Main Street. I would also add to that if this was to be approved by the City Council that would require an amendment to Section Q of Section 5.08-24 of our City ordinances. The procedure for this is as follows. First we would entertain presentation by the Lundeen's, secondly we would entertain questions and/or comments by the members of the commission and Liquor Commissioner to you and then take any question from Police Chief, City Administrator, and City Attorney. When that is complete we will take an advisory vote by the commissioners here tonight.

**Julie and Dave Lundeen:** We have given you some bullet points and an overview and information about us personally, about our businesses, and how long we've been in business. David opened the liquor store back in 1977 and then we expanded a couple of years to the east side, at some point we had a liquor store in Batavia but we liquidated that back in the late 80's;

and then we expanded out west with stores in DeKalb and Sycamore. Sycamore being our last store, when we were going before the city to get our license and going to do construction, Sycamore already had a drive-thru liquor store and that was not an issue for them and it wouldn't be for us either as long as our lot could accommodate a drive-thru window. So we have serviced a drive-thru window store out there for nine years and have always wanted to do our west side location on Rt. 64 the same. We purchased the 1315 W Main Street property back in the mid-80's. We are now ready to do this and this location is in a highly commercial area, this lot can accommodate this building and sets itself up very well for a one-lane drive-thru where you would enter in on the second driveway on 14<sup>th</sup> Street and go around the back of the building to the side where the window would be located and then drive straight out. Do you want to talk about the lot itself or what you are really interested in?

**Chrmn. Rogina:** The purview of this committee is you have to run those issues through the appropriate areas of our staff and we have that information, but pertinent to this discussion all we want to do is deal with the drive-thru issue.

**Julie:** We feel in this day and age so many people are busy and on the go and want convenience of this kind of service. This extends to handicapped individuals, seniors, moms with kids who must deal with taking children in/out of car seats, etc. It's not always just about the liquor but about other supplies, such as buying lottery tickets, cigarettes, the Sunday paper. There's so much more to it. I know some people are hesitant about the drive-thru window. They think that entertains an access of alcohol to minors, but we are not a drive-thru service where people come up and order through a box and then simply come to the window and pick it up. We are face to face with the customers and closer to them than we are in our store across the counter; plus it gives us insight of the entire car of who is in there. We have had one incident of minors trying to purchase in the nine years we've been operating this drive-thru. We feel this is the business model for cars whether it's coffee, dry cleaners, ice cream or burgers. This is the nature of how people do their business and shopping and how times are changing. The liquor industry has to move forward as well.

**Chrmn. Rogina:** We'll now take questions from the commission members.

**Ald. Payleitner:** I did visit your Sycamore location, it was very well run, but from what I see it is a very different environment. In Sycamore you are way out by several strip malls, you are not half a block from a junior high school. You say this location is really in a commercial area – kind of. You are backed up to an apartment building and a dentist office next to you. This is not the same as your Sycamore location which is not in a downtown area. I define downtown St. Charles as where the Christmas trees start, so I have a problem, not with your store being there, because we were okay with you relocating there, it's just the drive-up part.

**Julie:** It's no different than Taco Bell's lot, Dari Queen's lot, Dunkin' Donut's lot.

**Ald. Payleitner:** But there's a reason why we are requiring an acre.

**Julie:** I would love to have someone explain that, what I'm seeing here, and I'm not speaking for everyone here, but I highly doubt there are many independent property owners of downtown St. Charles that own an acre. The acre comes in when you have someone come in like the Oberweis section that buys up 3 to 5 acres and put the businesses on there and are allowed a drive-thru, but have you ever gone through the Starbucks drive-thru? It is awful and it's not their fault, but you either have to come in the main entrance and make your way going around or you cut through Oberweis or you come in off of Randall and cut through there. They have had to put in a bump. When you come through there you are dumped in the middle of the parking which is small, cars are coming and going.

**Ald. Payleitner:** We're not talking about Starbucks right now – I understand your point. An acre doesn't mean it's the end all. With due respect I understand we're not judging this situation and I can't help sometimes but put on my council hat. I see this as an uphill battle in getting that and changing everybody's zoning for that because it just wouldn't be your zoning, we would have to change all the zoning for drive-ups and changing the ordinance to allow for that.

**Chrmn. Rogina:** Both of you make valid points of that issue being dealt with in a separate venue and I don't want to deal with that. This meeting is based on the commission and my input to go to City Council with either thumbs up or thumbs down recommendation or no recommendation and put it in their hands and let them decide. They'll probably decide with a bigger picture of all the other issues dealt with. Our purview here is liquor.

**Ald. Payleitner:** I'll reserve my next comments as we make the rounds.

**Chuck:** The main concern I have is how do you, through a drive-thru window, make sure you are not serving/selling to someone who perhaps is already over served or has had more to drink than they should?

**Julie:** It's no different than when they walk into our store.

**Chuck:** I agree but my question is this – when they walk into a store and they're intoxicated they may be stumbling, the lighting in store helps you to tell visually; how do you do that through a drive-thru?

**Julie:** The lighting is superb actually. We have three cameras with one on the driver, one on the front, and one on the back license plates. We are so close to them that I can smell their breath. I am a foot away from them at this window and almost leaning into your car.

**Ald. Lewis:** Right now this is not a permitted use in our liquor ordinance and that we can discuss.

**Chrmn. Rogina:** The fact that this would require, if the Council approved this, to be a separate motion and a separate presentation to change our ordinance – you are correct.

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**Ald. Lewis:** I disagree with you. You ask how is it any different from Starbucks or Wendy's or McDonalds? It is different because alcohol is registered by the State and you have a license in which to sell it. You don't have to have a license to sell coffee. So it's different – it's a different product.

**Julie:** They have a drive-thru at Osco for pharmaceuticals that you also have to provide a license for and they have to do their due diligence to make sure those prescriptions are not being mishandled. It's the same thing when you are licensed for anything, it is the owner's responsibility to do our due diligence to sell that product in a responsible manner; and if we don't then what happens to us?

**Ald. Lewis:** Do you ever turn people away in your store and is it routine?

**Julie:** Sure we do and no it's not routine.

**Ald. Lewis:** I think we are sending the wrong message to the City of St. Charles if we are going to allow a drive-up window in our community. It's my personal belief and I think there are many people in the City who would agree with that?

**Julie:** Can I ask why it's any different that someone can pull into my lot, walk in, buys a 6-pack of beer and he/she can easily get into their car, crack a beer open and drive off?

**Ald. Lewis:** I don't think that is the issue at all. The issue is the perception that it's going to be made a lot easier, like you pointed out, this is what people want to do – they want convenience. We are going to make it a product that has a lot of controversy around it, a lot of regulations around it, and we are going to make it even easier. Packaged liquor is not allowed to be sold at a bar nor can you walk into one our restaurants and buy a 6-pack?

**Julie:** I believe you can in a bar.

**Tina Nilles:** Not in the City of St. Charles.

**Julie:** Okay, what I don't understand is why it is okay in a grocery store to sell wine and beer along with meat? It's the same accessibility. It's right there in front of you. I don't understand why you think it's easier? It's no easier when a driver comes up to window, I look at you, I card you, and if you're old enough.

**Ald. Lewis:** I give you my reasons, and if you don't understand them, I don't know how I can make you understand my thinking.

**Julie:** You're talking about perception.

**Ald. Payleitner:** In our role as councilmen perception is huge.

**Julie:** Our point is no different than any other licensed product whether its tobacco or a pharmacy, it is our responsibility to sell the product in a responsible manner.

**Ald. Lewis:** I am not saying that you aren't responsible business owners, but a drive-thru window is not something that I'm going to suggest that we have businesses do.

**Dave Lundeen:** Down south in the college towns they have drive-thrus, there all over in Texas.

**Julie:** This has nothing to do with acquiring liquor in an illegal manner.

**Ald. Lewis:** I also promote exercise and maybe we'll take that angle that if somebody has to get up out of their car they are at least moving instead of just driving through everything.

**Julie:** This is about business, not waiting on them.

**Ald. Lewis:** Will this hurt your business?

**Julie:** Yes, this is about the way our society is functioning, this is about the way our customers want to get their products, not just liquor – everything. We are in business the same way any other business is whether they are licensed or not.

**Ald. Lewis:** I haven't heard other liquor businesses say that there business is suffering because they are not a drive-thru.

**Chief Lamkin:** In checking out Sycamore's facility with their Police Chief they articulated that they do not really have any particular problems with their drive-up window. One thing that I think is a little bit different for St. Charles is that we have BASSET as a guideline for training for alcohol servers since 2004.

I took the opportunity to get some of the information that BASSET uses in their training to help to identify people who shouldn't be served and talked a little bit about serving through a window. A thumbnail of that is one of the modules deals with sight, a person selling alcohol to someone with bloodshot eyes, bumps, bruises, scratches or other visual actions, as well as talks about hearing, slurring of speech, abusive language, unusual statements, smells of alcohol, different odors of breath sprays and others signs. So what BASSET actually does is tries to help the sellers identify someone who has too much to drink. Taking the other side at the counter, Lundeen's has had only one time where they failed a compliance check several years ago selling to an under aged person. The greater concern to consider is these folks do a really good job running a liquor business. The question is what we do if we have stores b, c and d – how do we legislate that once we've opened the door for drive-up windows. This is something we need to consider as we go forward. It's difficult to say yes to one and no to someone else if we don't have something in place.

**Chrmn. Rogina:** That is a great point. My question is whether moving forward if this would be a concern for licensees b, c, and d if they would come forward. For sake of conversation let's

concede that based upon their past practice and history in St. Charles that Lundeen's presents a good model for this if we were to accept it. Are we in a position to evaluate as a case by case basis as to another licensee's past history as to whether they have also run a drive-thru or whether this a new thing for them; and whether City Council could say we don't believe you have the experience someone else has. That would not be out of bounds would it?

**Chief Lamkin:** No, we could certainly, if you were going to take that review, we have other stores that have come and gone, different people have operated the business, so I think you could take it on a case by case basis, but you need to be weary of looking like you're picking and choosing who you give it to and who you don't.

**Chrmn. Rogina:** Your remark is on point. You have to be consistent and have some sort of standard that you are going to follow on. Does Sycamore have any other drive-thru businesses?

**Julie:** There are a few but these businesses have been approved on a case-by-case basis. Also Sycamore does not require TIPS training and we do TIPS training for all of our employees in Sycamore and DeKalb but we don't have a drive-thru in DeKalb. We take training very seriously.

**Chrmn. Rogina:** Any other comments from Mr. Koenen or Counsel?

**Atty. McGuirk:** No comments, I think you have a good grasp of what is going on.

**Chrmn. Rogina:** I have a few comments. The comment of about a half a block/block from the middle school, I would retort by saying we have bars that are no more than a few blocks from the middle schools as well. On top of that I make the broad statement that we give licenses to sell liquor and allow people to go into establishments in our community and drink liquor. The Lundeen's are not doing that here. They are selling liquor which is a legal exercise. Perception – I agree with Ald. Payleitner, the Council always deals with perception; there is no question about that. I counter that by thinking of a more conservative economist in America, who has passed but his books are well received and written, and that is Milton Freeman who one of his last books is called "Freedom to Choose" and his theory would be to grant the permit. Long message, Mrs. Lundeen hit it on the head and our society is a changing society – they're the new normal. We can stick to the values we have, move along with new values, and enforcing the new values not change our standards. My opinion is not to say that I haven't taken all the other comments under advice, but I want to say that Chief made some good points that in talking with Chief Thomas in Sycamore he was very clear about the fact that the Lundeen's run a clean and tight ship over there for all these years and have not been an issue. One question, when someone walks into your establishment that is under the influence, it's very possible that they are not only slurring their words and having glassy eyes, but they are staggering. Counter the fact that you can't see the staggering individual in a car, still counter that argument as to why a drive-thru is still efficient.

**Julie:** We are close enough that you can see glassy eyes, you can smell alcohol and hear slurred speech. All these indicators are even closer to us. It's like a waitress serving you at a table – she

is right there with you. The same for us, we talk to our customers and we card everyone regardless. It comes to training your employees through the system. If there was a scenario of a car full of teenagers, it is easier for them to park somewhere in the parking lot where we won't see them and try to come in buy something than it is for the entire care to drive through. They know that and that's why they don't do it because we see everyone in the car.

**Ald. Lewis:** I don't have concerns about teenagers trying to drive through and buy liquor. My concern is the person who has been over served because even waitresses and bartenders who are right there in their faces – that's why this commission has been formed because there is a problem with over serving.

**Chrmn. Rogina:** I agree with you, but we're not there and there could be over serving in a tavern, bar or restaurant, but theoretically for here the question is are they adding fuel to the fire? Is there any evidence that they are adding fuel to the fire?

**Ald. Lewis:** If you could only tell by sitting and looking at someone, the first thing the police officers do is make you get out of the car and walk.

**Julie:** It's pretty obvious when someone is intoxicated. It's not just walking.

**Ald. Payleitner:** I don't want you to under estimate the image issue because that is huge and secondly the size of your property is huge too. There is a lot of reasons that I can't tell you right now as I am not part of Community Development Department, why they have to have landscaping in such a way, why driveways have to be so wide, why you need to have stacking and so much parking; this all makes sense. Anything that we've approved recently, it looks good from the outside. That's another image thing.

**Chrmn. Rogina:** If they pass that barrier in Community Development...

**Ald. Payleitner:** They won't. This is a quarter of the size that is required. It's not close.

**Dave Lundeen:** (Comments on disputing the size of the property.) Look at Oberweis.

**Ald. Payleitner:** I am not addressing Oberweis. You are tucked in here. You're not on the edge of town. You are not in a strip mall on Randall Road where Oberweis is pretty much. You're right in town.

**Julie:** We are not; we are a block from Oberweis.

**Ald. Payleitner:** It's about the image. They are a strip mall that has a paved parking lot and serves multiple clienteles. You are in a secluded little square block area. So it's different. I do want to compliment you. When I went to the Sycamore store, you are not kidding that there is only six inches from driver to server through the window, so I don't doubt that you could tell. The size and changing of the zoning is a huge hurdle and the changing of the ordinance.

**Chrmn. Rogina:** Our ordinance as it stands right now prohibits this activity. This is not in dispute and would have to be changed. The Council will be briefed on this when it goes before them and make that choice.

**Chuck:** I've been part of the training to sell alcohol responsibly, so the comments that were given back were exactly what I was looking for. I spoke with the Sycamore Mayor and, like the police chief, he said there have been no problems and to comment on what you said to let the market decide if this is a successful venture; it will tell you if it's successful or not. I agree with every side of this argument that is has a valid point.

**Ald. Payleitner:** When I say all this image, in addition you have to be responsible business owners, which you have more than proven. One of our big jobs is making sure that businesses are good neighbors and this commission here is to make sure that people who sell liquor are good neighbors. I don't think a drive-up window in this location would be a good neighbor.

**Chrmn. Rogina:** I don't believe you've sold me on that point only because we have bars in this town that are in a neighborhood; so I'm not going there with the idea that this location is no different than other liquor sales in this town. I would say their history suggests, at least in the current role, they have been good neighbors.

**Ald. Payleitner:** Yes, that is why I voted yes for their liquor license because they have proven themselves good neighbors.

**Ald. Lewis:** You've had your business in the mall for how many years and you never wanted a drive-in. This is the first time you ever wanted a drive-thru?

**David:** 37 years and we tried about 20 years ago for one. No one wanted it at the time and no one has one. Everyone has drive-thrus now, eateries, etc.

**Julie:** We wanted to have a drive-thru before but at that time they were not prevalent. Liquor was very different where liquor licenses were limited in every town, where you sold was limited, and they are not anymore. We would like to have been the first one to try it, but now with the way the business models have changed, society has changed, and we've had nine years of successful experience, we feel the need to do this, and again, don't feel it's any different than any other license businesses that are doing it.

**Ald. Payleitner:** I would like to correct one thing that we do have a limit of liquor licenses in St. Charles. We have to change the ordinance every time we go beyond that limit.

**Chrmn. Rogina:** Because of the advisory nature here, I am not going to ask for a motion. The question before us here is whether or not you should advise me to advise the Council as to whether or not they should have a drive-thru. I would ask for a vote on this which a yes would be for me to advise City Council to do so. No vote is for me to advise City Council not to do so.

**Roll Call:** Ayes: Amenta; Nays: Payleitner, Lewis – I am not in favor of this but the Mayor has the right to take it to City Council but with that said my vote is no – everyone has the right to go before the Council; Absent: Ghem.

**Chrmn. Rogina:** The way we structure this is the Commission is giving me advice and I told you and the public at the beginning that your advice was not going unheeded. I think I've indicated my desires here giving their history and their arguments and given some of the arguments that exist relevant to us selling/serving liquor; I don't see a problem. But in fairness to your vote 2 to 1, what I'm going to do is encourage them to go to City Council and regarding the recommendation I am going to tell the Council exactly what the vote was which is one in favor, two against it, and the Commissioner favors it and then let the Council decide themselves. This has been a good discussion, a lot of information came out, so that's the purpose of doing this.

**Ald. Lewis:** They can actually go to the Council without any of us recommending them – correct? If we all said no they could still do it?

**Chrmn. Rogina:** The Council always asks for recommendation by the Commissioner and the Council can make their decision. So, I would invite you (Lundein's) to schedule this and work out all the other details relative to your project.

## 5. Discussion of Liquor License Late Night Permits

**Chrmn. Rogina:** This is an important last phase to make an attempt to reform the whole issue of issuing licenses in St. Charles. We established a commission here for starters and we started to discuss the matter between what's a restaurant and what's a bar? Here we are asking the question of should we look at a model that has been around a bit which is the Naperville model and I would start by saying that Chief Lamkin, City Administrator Mark Koenen, and I discussed late night permits.

Deputy Clerk Nilles gave us a tremendous amount of material of the Naperville model. When you cut through a lot of that what I would like to propose is as follows. Here in St. Charles we should issue liquor licenses, the key being licenses, that have a closing time of 12:00 midnight. Packaged liquors like the Lundein's already have it built into the ordinance that they will close earlier, so there are some licenses that close before midnight. Those licenses will remain the same and are cheaper as far as cost is concern.

**Deputy Clerk Tina:** Some class B licenses pay \$1,200 a year and close at midnight but all Class A licenses pay \$1,600 a year and close by 10:00 p.m.

**Chrmn. Rogina:** So if we were to establish a base time of midnight that would be all licenses. Now can you stay open until 2:00 a.m.? Yes you can by means of a 2:00 a.m. permit reviewable by the City Council every year. That 2:00 a.m. permit would cost money. Right now it costs \$2,600 a year and we can have a conversation of what it would cost in the future. I would also like to add into the mix a 1:00 a.m. permit which would be cheaper than a 2:00 a.m. permit and

would engage those licensees that would want to stay open beyond midnight but not stay open until 2:00 a.m. to have some leeway. So you could have a 1:00 a.m. or 2:00 a.m. permit, where this permit would be reviewed every year by the City Council.

The second phase of my proposal is for staff to come back to us with the criteria for which a 2:00 a.m. permit might be reduced to 1:00 a.m. after review; or a 2:00 a.m. permit might be reduced to midnight, or a 1:00 a.m. permit could be reduced to midnight. Other words the Council would have established criteria for purposes of reducing permits at the end of the fiscal calendar year. I want to keep it as simple as possible and I will take questions. That in essence is the heart and soul of this Naperville permit. Naperville also has an 11:00 p.m. base license and allows for one extension to 2:00 a.m. I am proposing 12:00 midnight base and 1:00 a.m. and 2:00 a.m. permits for a price, and then the City Council on an annual basis reviews them for purposes of looking at any offenses that have been created and have the staff to come back and lay out criteria.

**Ald. Payleitner:** I like it. As far as the annual review before Council, what we're looking at for a business would be actual violations or could we be looking at a business that perhaps mislead as to their intents? Could we do things like that or does it have to be actual come before the commission offenses?

**Chrmn. Rogina:** Chief and I had some conversation and we think that will be the trickiest part of this whole thing in the final analysis.

**Chief Lamkin:** Your point is right on track. There may be issues that occurred that don't rise to the level of a violation in it. This is more difficult in terms of activity that plays into intolerance levels and I'm not sure we will be able to have clear definitions on the issues or violations.

**Chrmn. Rogina:** We discussed the fact we could have criteria, as an example, someone could have one violation and two warning letters as a possibility. So build on what you're talking about, my suspicion is we could build some language in that would talk about unprofessional activity.

**Ald. Payleitner:** So more than just the whim of council.

**Chrmn. Rogina:** Right, you can get into those dangerous situations if you are not consistent.

**Ald. Payleitner:** It's permission, not a license.

**Chrmn. Rogina:** It's a permit but they should know that they have been granted that permit and all licensees will be handled in the same manner. It's very important to have something in writing rather than the whim of the Council.

**Chuck:** I agree it's rather more objective than subjective – that's makes it very clear about the rules in place. I like the 1:00/2:00 a.m. permits too.

**Chrmn. Rogina:** There is plenty of licensees in this town that have 2:00 a.m. licenses because they want to stay open after midnight, but don't want to stay open until 2:00 a.m. So they pay for the 2:00 a.m. license which is \$2,600 a year. That 1:00 a.m. permit might be a lot cheaper.

**Chuck:** If I could repeat a comment that I used in the last scenario, the market will dictate whether 1:00 a.m. works, so I have no problem with this.

**Ald. Lewis:** I like the idea but I have a concern and maybe Chief Lamkin can answer this better. If several taverns/restaurants choose to have a 2:00 a.m. or 1:00 a.m. permit, is this going to be difficult on who gets to stay open when and who gets to be closing; and if one decides to close is there going to be a huge influx of people trying to get in to another establishment with lines outside because they have met their capacity? Will the police enforce capacity if a 1:00 a.m. license closes and these people aren't ready to go home?

**Chief Lamkin:** Our police personnel can adapt and will keep it straight who has a 1:00 a.m. or 2:00 a.m. license. As for capacity, we don't do capacity – that falls onto the Fire Department and that is something that will have to be monitored. If a place closes and pushes everyone out the door, those folks have the option of going home or going somewhere else. The other side of that is if you're a place that stays open until 2:00 a.m. you don't necessarily want all those people coming to your place. For the first year they'll probably be an influx but I think it should be manageable.

**Ald. Lewis:** So capacity is never monitored unless the Fire Department is walking around at 1:30 a.m.

**Chief Lamkin:** We've had incidences where we had the Fire Department come in and I am working with Chief Schelstreet on that. Responsibility also falls onto the door people of the businesses.

**Ald. Lewis:** Is this something we could put into effect or do we have to change the ordinance? Can you have a trial, or is it one or the other?

**Chrmn. Rogina:** We have an ordinance in place that has classifications and right now those classifications either come with a midnight or a 2:00 a.m. closing; so it would require some tweaking of the ordinance, but the good news is if it was past at Christmas time or whatever time frame for any new licensees coming on board, we could say these are the rules you follow. All other licensees that have their licenses from May 1 through April 30 will be in effect until May 1.

My purpose for throwing that out is to give staff an opportunity to tweak this and possibly present it at our upcoming Council Retreat so we have a chance to talk about it there before it comes before City Council.

**Ald. Payleitner:** I think this can be presented very sweet and simply. If it was going to be a complicated thing I would say “oh boy” but it sounds like it can be done and I think the bars/ restaurants will define it by themselves.

**Chrmn. Rogina:** I think there are some merits here and opportunities, and Chuck’s saying for the marketplace perhaps ask the question “do I want to stay open until 2:00 a.m. – maybe I’m better with a 1:00 a.m. license”.

So without objections we’ll direct staff to bring to the Liquor Commission criteria on how the Council might reduce a permit from its current time to an earlier hour (2:00 to 1:00 a.m. and 1:00 a.m. to midnight).

## **6. Filling Station Liquor Violation Notice**

Next we have a complaint of violation being brought before this St. Charles Local Liquor Control Commission pursuant to this authority, shall revoke or suspend or fine the local liquor license issued to The Filling Station upon violation that occurred on or about August 16, 2013.

**Peter Mulligan, Manager Partner of The Filling Station, 300 W Main Street.**

**Chrmn. Rogina:** We will give you an opportunity to address the specifics in an informal manner, but when we are done here it is important that you say that you either agree that the complaint is accurate or you can say you would like to have a hearing on the matter and one will be scheduled.

**Peter:** Because this is a new process I do have some questions. What are the fines if I should plead guilty – what is the minimum and what is the maximum?

**Chrmn. Rogina:** Quoted the ordinance Section 5.08.320 “License – Revocation or Suspension – Hearing Procedure” … the fine shall not exceed \$1,000 for a first violation within a 12-month period. So the minimum could be \$1 to a maximum of \$1,000 with legal fees of \$500.

**Peter:** What would the potential fines be should I plead innocent and found guilty? Would they be the same?

**Chrmn. Rogina:** You would be spending more money for a lawyer to come here. I can’t speak for this group but I can for myself as commissioner by saying it doesn’t have any impact on me one way or the other.

**Peter:** How much does it cost to get an officer down here to testify?

**Chief Lamkin:** They would have to be paid overtime and there would be three officers so \$250 per officer.

**Chrmn. Rogina:** This is not a criminal matter so I can ask these questions. Do you think the description in the complaint is a relatively accurate description given by the officer?

**Peter:** It is mostly accurate.

**Chrmn. Rogina:** So purpoderous more than 50%?

**Peter:** Someone is missing today, so I would be back here in front of the five of you making my case and the city attorney would be prosecuting me?

**Atty. McGuirk:** It would actually be our criminal attorney, but basically what would happen there would be testimony of the police officer, again it's the purpoderous of the evidence, so it's not beyond reasonable doubt of evidence, you would have an opportunity to present whatever evidence you want on the issue of guilt and then thereafter you would have whatever evidence you want to present in terms of mitigation and why should the fine be less than whatever. Then basically next the Commission would go into executive session, have a discussion, and make a recommendation to the Liquor Commissioner and he would provide a written fine into you after the hearing.

**Chrmn. Rogina:** To reiterate on this so we are all clear on the issue at hand. You come before us, we go into executive session, the commission will provide me with input and as me being Liquor Commissioner I have the sole responsibility to impose the penalty.

**Peter:** Have all of you read the report?

**All:** Yes.

**Peter:** If I have to plea at this time, I believe this is pretty much accurate. I also think this exonerates me from responsibility.

**Chrmn. Rogina:** If you think it's mostly accurate, you can stipulate to that and they'll be no hearing and we'll go into executive session to make a decision; but you'd be allowed right now to indicate to us why you think you should have no fine or whatever the case may be. But once you allow us to go into executive session to decide you are in effect saying you are guilty.

**Peter:** Okay, I am going to plead not guilty.

**Chrmn. Rogina:** Okay, we'll schedule a hearing on this for a future date.

## 7. Other Business

**Chrmn. Rogina:** Tonight Vito Brandinisio, owner of Acquaviva, is here to address the Liquor Commission, at least for the purpose of us entering into a conversation on his issue.

**Vito Brandinисio, Acquaviva, 214 W Main Street, St. Charles:** I would like to propose that I can have a martini bar at my current location.

**Chrmn. Rogina:** For point of background, could you describe for the members of the commission how you currently operate your business – we know it's a wine bar.

**Vito:** I operate it with a different class of people. I try to maintain the integrity of the City and integrity of alcohol.

**Chrmn. Rogina:** What do you currently sell in your business as you are asking about selling martinis.

**Vito:** The only two things we sell right now is wine and beer as well as some cheese and deli.

**Ald. Lewis:** What is your liquor license classification?

**Vito:** Class A5.

**Ald. Lewis:** So its beer and wine only and in order for him to sell martinis you would need a license that allow this?

**Chrmn. Rogina:** What kind of license is he looking for Tina.

**Tina:** If he is going to sell alcohol of this kind it will put him into a different classification.

**Vito:** We have only one other liquor license of my classification in St. Charles and I did not think it would be a big deal to add martinis to my A5 license.

**Chrmn. Rogina:** It's clear that to do that would put you into a different classification. My question is what is your time of closing that you expect to close at? Do you plan on keeping it at the current time?

**Vito:** The officers can tell you that I am one of the earliest businesses that close on the street. There are times I don't stay open because I have no business and I basically close by 10:00 p.m.

**Chrmn. Rogina:** I am asking because would you maintain the same closing time as you have currently?

**Vito:** I would be closing at the same time as I do now if that is what you are asking.

**Ald. Lewis:** So you wouldn't be asking for the special late night permit? You would just take the basic license that would close at midnight?

**Tina:** An A5 license closes at 10:00 p.m. as all Class A licenses do. Right now if he went into a Class B1 he can close at midnight which is restaurant with predominantly food. We do have a

C4 liquor license where you can sell alcohol primarily, as well as purchase a bottle of wine unopened out the door.

**Chrmn. Rogina:** He will have to go through the process before the Council in order to do this.

**Vito:** I have no one walking the streets looking to purchase a bottle of wine and I am there in my facility all the time and I need someone to help me from the City of St. Charles. If you people want me there, I'll stay, but I don't have a problem to move out. There is no foot traffic for me. I've spent hundreds of dollars on this place and I need some help. There is no retail market on your street. It is dead. There is nothing happening from 12:00 noon to 8:00 p.m. If I knew that I would not come here. I am asking for some help.

**Chrmn. Rogina:** This Commission here is no position to grant you that other than to give you some input as to whether or not this sounds favorable or not favorable. I am going to open the floor here.

**Ald. Lewis:** I am curious on how you decided on martinis as though martinis will help your business. How did you come to this conclusion?

**Vito:** In the martini world there is a certain class of people, not too young or too old. They are in the professional world and will come to a place like that as there is no other place in the City of St. Charles. They are not going to go where there is a lot of noise. It's a quaint facility that I have and it's another part of dollars into St. Charles.

**Ald. Lewis:** In order to sell martinis you will be getting a license that will allow you to sell any alcohol, so do you have plans to expand to Manhattens, Old Fashions, any type of liquor?

**Vito:** Absolutely, I will serve to the people.

**Ald. Lewis:** So you're going for a license that will allow you to sell alcohol.

**Ald. Payleitner:** I don't have any issue with this, but the fact that you are blaming the lack of retail in St. Charles for your business – that I have a concern with. I'm not sure I would call your business retail per se. I wanted to visit your establishment, and I could not find a working website, could not find your hours unless I drove there in person. I'm wondering what kind of marketing you have done for your business?

**Vito:** I have a website. I've brought more people to St. Charles from Maple Park. I'm the one who is drawing people from elsewhere, Naperville, and those same people are asking if they can have a martini here.

**Ald. Payleitner:** You want to build your business and I understand that. I was just asking a question as a possible consumer. I've never been in one of your establishments so I am not aware. People who have been in your establishments are aware.

**Chuck:** I feel as long as you fill the requirements to receive that license I have no problems with the expansion of your business.

**Chrmn. Rogina:** I was at the grand opening, ribbon cutting, of your establishment and what you have done inside there is a credit to St. Charles. It's well done and tasteful. I have two council members up here and they can probably opine better than me, but I have a sense that the City Council is not really prime to offer a licensee downtown a 2:00 a.m. all inclusive liquor license. That is going to be a tough road. You have indicated to me you would like to serve fine wine, beer, and hard liquor and your bar is such that you'll close at midnight is a better sell at this point in the game. Now as we move along to our new structure, perhaps there's a situation where you can purchase a 1:00 a.m. permit, I'm just saying. Perhaps my two colleagues who sit on the Council could opine as to how they think that would play. That's an important piece here and I don't want to sell him the wrong way in knowing the mood of the council relative to opening new bars in downtown St. Charles with a 2:00 a.m. license.

**Ald. Lewis:** You'll certainly have that potential once you go to the new classification and have the opportunity to purchase until 2:00 a.m. and there's nothing that can stop you in doing that if you so choose. Mayor Rogina is correct that the feelings of the City Council, this point in time, is not the direction they want to go to have more liquor establishments in that little area selling hard liquor in that area until 2:00 a.m.

**Vito:** What I'm hearing is it is more beneficial to me to get at midnight license then a 2:00 a.m. license?

**Ald. Lewis:** Yes, but that being said there is nothing that will prohibit you from coming back and saying now I want to get a 1:00 a.m. or 2:00 a.m. permit and having no violations can ask for it. All he would have to do is pay his money.

**Chrmn. Rogina:** That is something we would have to clarify in the new ordinance whether a midnight license can petition for a 1:00 a.m. or 2:00 a.m. Right now all he is asking for is a license.

**Ald. Lewis:** We would like you to stay in St. Charles, but the Council members are going to have to have an answer when it is reported that another bar has opened in this area and why do we allow to continue to have St. Charles called a bar town?

**Vito:** It's not important to me to have a license until 2:00 a.m. I'm here to upgrade my license. I'm not asking to stay open until 2:00 a.m.

**Chrmn. Rogina:** You could go to Tina and work on a midnight license that allows you to sell hard liquor. That will still come before the council – correct?

**Mark Koenen:** In the framework of our current ordinance it would go to Council, but I think I hear this gentleman asking for the ability to sell hard alcohol in addition to wine. We have a category that allows him to sell any kind of liquor across the board and it replaces altogether the

license he currently has. We don't have a license that just sells packaged wine sales and you can come in and have a martini. You either do it all or you do just this wine package that he currently has now. In regards to time, this other license falls under the 2:00 a.m. category.

**Chrmn. Rogina:** If you want immediate action, we do not have a license that would allow him to sell hard liquor, close at midnight, and buy package wine. That's our problem more than anything else. In a heartbeat we could say you can stay open until midnight and sell hard liquor, but until 2:00 a.m. is going to be an issue.

**Vito:** I don't have a problem with 12:00 midnight.

**Chrmn. Rogina:** Since we are not an action body, the best thing is to defer to let him have some conversation and come up with a solution in the short run, if possible. If not, he'll have to wait until we change our ordinance.

**Mark:** Since this wasn't on the agenda tonight, we had this open dialogue and appreciate your concern and what you had to say. We can't accommodate this right now but it would be helpful for you to fill out an application so it is clear in what you are looking for as opposed to this conversation we're having.

**Vito:** Why can't we go on the basis of opening this license contingency on.

**Mark:** This body here considers it first and then it goes to City Council for consideration. There is a process that we have to follow that will legitimately incorporate that kind of a code change.

**Chrmn. Rogina:** Vito I see your concern and feel for you, but procedurally as the City Administrator stated there isn't too much we can do here. We can't say to you just off as a whim that you can have this; we have to go by the ordinance that we have on our books.

**Atty. McGuirk:** The code has classifications and you have one. There's no procedure for upgrading your classification. You want to apply and get yourself into a different area, then you have to apply for that license. That's what we currently have. In the future it could be different, but now if you want to change from where you are, you got to attempt to secure a new license.

**Vito:** But I have a problem – by me getting that license it takes away my retail license. By trying to solve one, we are destroying another.

**Chrmn. Rogina:** You certainly have the right to change your license to a license that keeps you open until 2:00 a.m. and sell hard liquor and come before the council and make your argument and let them vote thumbs up or thumbs down.

**Ald. Payleitner:** What he's saying is he can't sell his bottles of wine for people to take home.

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**Tina:** We do have a C4 liquor license on the books that would accommodate him selling wine and allow him to serve hard liquor and reads as such: "Class C4 licenses shall authorize the sale of alcoholic liquors on premise for consumption on the premises of a tavern, bar or saloon. Class C4 licenses may authorized sale of alcoholic liquor in outside sales areas provided such sales are in conjunction with food service, if approved by the Local Liquor Commissioner. Class C4 licenses shall also authorize the retail sale of wine in original packages only and not for consumption on the premises." He would fit into that. Since it's a C license it is 2:00 a.m. closing time which he does not have to stay open until that time but the 2:00 a.m. automatically comes with this. This is a tavern license.

**Chrmn. Rogina:** Would I be out of bounds here in steering him on the right track to apply for that C4 license and come before the council and request that. This could be done as early as the next committee meeting on October 7.

**Tina:** Yes October 7 Government Operations Committee and then onto October 21 City Council meeting.

**Chuck:** If he comes before the council and says I am going to have a 2:00 a.m. license but will only stay open until midnight – would that change the view on how the council may think about that license? He doesn't need a 2:00 a.m. license but that's all that is currently available at this time.

**Ald. Lewis:** Yes, but that's a great amount of trust and I think there's been issues where we have been stung by that trust.

**Chuck:** Are we not talking about putting in place the availability to review these licenses and take away those permissions?

**Ald. Lewis:** I think that will be hard to do in the end. I think there will be some difficulty in getting those rescinded if that's the right word.

**Chrmn. Rogina:** I think we at least give you an option to work with in the short run and Tina will steer you through that. He has gotten quite a bit of input from this group already which is the purpose of this. Mr. Amenta raised a good question of why should Mr. Bandinisio go through the process if the reality is the City Council is not going to approve a 2:00 a.m. license downtown despite his promise to stay open only to midnight.

**Vito:** I've been in my Maple Park facility for four years and in those four years I've never had a citation, never had any trouble from the law, and I do close my facility at the right time or hours before. So in spite of the word "honesty" I appreciate what you are saying. I don't want to stay open until 2:00 a.m. – I just want to make a living. I'm not here to cause problems.

**Ald. Payleitner:** I agree with Maureen that we can only speak for ourselves and it will be a tough sell going in. You got some history going in which can work to your advantage. You can speak to your business model. Your promise of limiting your hours...

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**Vito:** My promise sticks. I built a facility over \$15M. I built a facility with the integrity of my family, do you think for a second I would lie upon 214 W Main Street, St. Charles.

**Tina:** Reread the C4 license classification from City Code. This license was created for the former Brix Wine N Cheese who did precisely what Mr. Brandinisio is requesting.

**8. Executive Session – None**

**9. Adjournment**

Motion to adjourn by Ald. Payleitner, second by Lewis at 6:03 p.m.

**Voice Vote:** Unanimous; Nays: none; Absent: Ghem; Mayor Rogina did not vote as Liquor Commissioner Rogina. **Motion carried.**