

**MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
MONDAY, OCTOBER 21, 2013**

1. Opening of Meeting

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

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

Absent:

Others Present: Deputy Chief Kintz, Mark Koenen, Atty. John McGuirk, and Tina Nilles

2. Motion to accept and place on file minutes of the Liquor Control Commission meeting held on September 16, 2013.

Motion by Ald. Lewis, second by Payleitner to approve minutes of the September 16, 2013 Liquor Control Commission Meeting.

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

3. Hotel Baker Liquor Violation Notice.

Chrmn. Rogina: This a complaint of a violation 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 liquor license issued for The Hotel Baker or impose a fine upon by reason the Complaint of Violation field by the Police Department of an occurrence on or about September 5, 2013. According from the complaint, on or before September 5, 2013 at approximately 12:09 a.m. the licensee, JDB Investment Group, LLC, d/b/a Hotel Baker, by and through its employees, officers and/or agents, committed the following offense in or upon the licensed premises at 100 W. Main Street, St. Charles, IL 60174 – that offense being allowing a patron to exit its premises while in possession of an alcoholic beverage. That the acts detailed in Section 2 of the Complaint of Violation each are prohibited and are in violation of and contrary to Section 5.08.250 (R,S) of the St. Charles Municipal Code and the Liquor Control Act of 1934. You all have a copy of the facts and if I could have counsel of the Hotel Baker come forward.

Atty. Joe Klein, 36W494 Hunters Gate Road, St. Charles, IL 60175 - counsel for The Hotel Baker: I apologize for Mr. Salas who is running late and will be here momentarily.

Chrmn. Rogina: I understand you have stipulated to the facts as they are?

Atty. Klein: Yes I've advised him that we would stipulate to the facts of the complaint. He just asks for an opportunity to speak to the Commission to present some litigation for the Hotel Baker.

The Hotel Baker has been around for some time and under its current management and ownership going into 10 years and has an excellent record with the City of St. Charles without any ordinance violations, let alone liquor violations. Management and ownership believe they are a good neighbor and good business to the City of St. Charles. The bartending staff has gone through extensive training with regards to ordinance compliance, but it's just not the bartending staff, it's the wait staff, the front desk, and front door staff again to ensure compliance with these liquor violations. There is video surveillance that has been set up, not only for purposes of allowing staff and management to view what happens in the hotel and in ROX, but also for purposes of training. For example in this circumstance to help staff learn what they did wrong, and what they can do better to make sure that something like this doesn't happen again. As you know this is not a single purpose location. There is a bar, restaurant, a banquet facility, and hotel rooms; so the level of traffic in and out of that place is pretty extensive. I don't know if it's more than your typical liquor point of establishment but it's certainly different in nature of what comes in/out of that facility and makes it a little bit harder and requires somebody that much more vigilant as it relates to compliance with the ordinance. You might have at any one time showers, weddings, birthday parties, meetings going on simultaneously at different points in that facility and there could be liquor being served at any one of those different points within the hotel. So it makes the staff that much more aware of what they need to do and it helps them be that more vigilant with regard to watching what happens, not only at those events, but also in ROX. The hotel also opens its doors to the community at times for parades, for example, again you have a whole different kind of traffic going in/out that makes it more difficult, and yet highlights their record with regards to these issues and they have done a really good job. I think the hotel views this as an aberration, it's not something you have a history with the hotel and it's certainly not something you will see before you again. There has already been a follow-up with the necessary staff to make sure that these types of things don't happen and we're hoping that, Mr. Liquor Commissioner, you will take those facts and circumstances into consideration when making a final determination.

Chrmn. Rogina: So I understand that was basically an argument in mitigation, so that would permit us to go into Executive Session and make a decision on the matter and you're stipulating to the facts and admit to guilt?

Atty. Klein: Yes.

Ald. Lewis: I was confused when you said you had cameras installed – you had them before or you put them in since this happened?

Atty. Klein: There were in and that helped us to determine what happened on that evening and institute some proper training with the staff people who were involved.

Ald. Lewis: And you have someone at ROX sitting at the door?

Atty. Klein: Yes but then you got people at the front door going in/out of the hotel as well and the front desk is also watching people coming out. So you got the bartender, the hostess, the front door to the hotel and the front desk.

Ald. Lewis: When you go out the back through the Rainbow room there is no way to leave the grounds of the hotel?

Chrmn. Rogina: Mr. Salas is now on the premise and in position to answer that question.

Joe Salas, Hotel Baker: There is a service door that employees use and I suppose someone could exit out that way.

Ald. Payleitner: Did we determine where this gentleman was coming from such as from a banquet?

Atty. Klein: He was coming from ROX. It's possible he could have been coming from his room but he came out of the hotel.

Ald. Payleitner: On the incident report type it says drunkenness – was he intoxicated?

Deputy Chief Kintz: That's one of the generic headings we have on reports and the specific crime underneath is the open alcohol.

Robert: Is there usually someone station at the front door at night or valet parking that sees people coming in/out of the revolving door on Main Street?

Joe Salas: This took place on a week night that was quiet and the hotel is fully staffed on the weekends with a valet when its required and we usually have greeters who open the doors for people. Unfortunately when the hotel is quiet during the week it's very difficult for us to have that type of personnel being up front throughout the evening, especially at 12:00 midnight. The challenge we have is that the bartender before it closes would say last call and we assume when they take their liquor out of the bar they would go upstairs to their rooms. I think that may have been one of those days, we looked at the records, and he ordered his drink just before we were about to close and made the assumption the guy was going upstairs. At the same time the bartender has been there for over 10 years and so he understands it very well. Unfortunately it was one of those unexpected things that took place. Generally we are manned and everyone knows not to leave the premise and we try to keep an eye on those things. It's one of those things that we are very disappointed in ourselves that we let that happen.

Chuck: The gentleman who left the premise with the alcohol, was he just stepping outside to get some fresh air, was he going somewhere? It doesn't say on the report.

Deputy Chief Kintz: We don't have any more information on him.

Atty. Klein: We do know he was a guest at the hotel.

Motion by Robert Gehm, second by Chuck Amenta to go into executive session at 4:44 p.m.

Voice Vote: Ayes: unanimous; Nays: none. Chrmn. Rogina did not vote as chair. **Motion carried.**

Motion by Ald. Lewis, second by Robert Gehm to return from executive session at 4:55 p.m.

Voice Vote: Ayes: unanimous; Nays: none. Chrmn. Rogina did not vote as chair. **Motion carried.**

Chrmn. Rogina: Coming out from executive session I will take the advisement I received tonight and issue an order to you within 7-10 business days. I appreciate the fact that both Atty. Klein representing the Hotel Baker and Mr. Salas, the owner, have come here today and laid out mitigating factors of what happened. It showed a degree of class of admitting the wrong and owning up to it.

4. Discussion of Liquor License Late Night Permit

Chrmn. Rogina: In continuance of discussion from the September 16, 2013 Liquor Control Commission meeting, the staff is requesting direction from this commission to move forward in creating an ordinance amendment to Title 5.08 "Alcoholic Beverages" to address Late Night Permits to the take before City Council approval.

The essence of this does keep licenses that are of A, D, E classifications away from this discussion because the proposal is only relevant to B and C licenses. The proposal would suggest in moving forward and changing the ordinance that for B and C licenses service hours for sale of alcohol ends at midnight seven days a week. That's the base premise for the license.

It also goes on to say that a new section needs to be created if we desire, as a City Council, for a licensee to seek, if they are a B or C class license holder, a late night permit for a 1:00 a.m. closing or a 2:00 a.m. closing. The City Council may also modify the number of late night permits that it wants to allow.

Section B is the criteria for granting such a late night permit.

Section C and D talks about the process to apply for a license and permit and talks about what happens if there is a change of ownership and then the review that takes place by the police and by other departments in the City.

Section F suggests a new late night permit shall be reviewed by this commission and brought forward to the City Council.

Section G – any new liquor license application is also requested to go to the police department for a background investigation.

I suggest we need to do a little work on Sections H and I but the essence of H and I is the heart of the establishment of late night permit and possible penalties. This commission has the right to recommend to the Council the reduction of a late night permit from 2:00 a.m. to 1:00 a.m. or 1:00 a.m. to midnight.

Section J becomes an important feature of this document with cause to reduce hours, revoke late night permit or not issue late night permits and this section provides a broad array of those possible violations or developments.

Commander Kintz could you take us through the purpose of special exemptions so if this commission would like, we could certainly draft something up in the next round for review.

Deputy Chief Kintz: Chief Lamkin and I discussed where the rare exception of when someone who has a midnight license is going to want to stay open later and a prime example of this is going to be New Year's Eve. If we go back in time when we had the 1:00 a.m. license, the liquor license ordinance allowed them to stay open until 3:00 a.m. on New Year's Eve. When we switched to the 2:00 a.m. license everything switched to 2:00 a.m. and the 3:00 a.m. was taken out. We are not advocating a 3:00 a.m. closing but you may have a restaurant that normally closes at midnight that is going to want to stay open for a purpose and when we came up with that thought – what if they have something that pops up outside of New Year's Eve? So that is something we want to present to the commission for you to consider. Is there an opportunity for someone whether they close at midnight or close at 1:00 a.m. for a late night exception for them to possibly stay open until 2:00 a.m.? How many times can they do that and under what circumstances? That is something we would ask you to consider.

Chrmn. Rogina: So if the commission says bring this back as an add-on to this ordinance to reflect what you just said, you are only talking about those individuals who have a base midnight license or a 1:00 a.m. permit. The 2:00 a.m. businesses are golden. They are not going to get any further exemption.

Deputy Chief Kintz: That is correct. 2:00 a.m. is plenty.

Chrmn. Rogina: Are we open to an add-on that would address Deputy Chief Kintz's point?

Robert: I would think once or twice a year that they come before requesting that special exemption whether it be for 1 or 2 additional hours; I think that would be worth having.

Ald. Payleitner: I agree. This would be similar to a special event?

Deputy Chief Kintz: You could even specify the only time we are going to do this is New Year's Eve and write it in there because you want to make it as easy on yourself as possible that you're not having these applications coming in every year.

Chrmn. Rogina: If we are in consensus here, we'll let the staff make the determination of what looks good and would be appropriate based upon past practice. Whether it be specific dates or whatever.

Chuck: I have no problem with offering a special use or special exemption permit. It's a great opportunity to let some of those places compete like that.

Ald. Lewis: I don't have any problem. I would like to see it written that's it's a given for New Year's Eve and, if so choose, maybe there are two other times. They don't have to come to us ask to stay open later on New Year's Eve.

Chrmn. Rogina: Would that be an add-on to all licenses of the midnight and 1:00 a.m. variety?

Deputy Chief Kintz: I think we can. We would have to defer to Council in order to do it.

Atty. McGuirk: You can certainly make that part of those licenses that they have a one-time 2:00 a.m. option on New Year's Eve. Beyond that if there were any other circumstances that you might give it, you ought to have a procedure to apply for it.

Ald. Payleitner: Would it help if we put in stipulations upon notification so police would know?

Deputy Chief Kintz: We would adapt either way, because if you say across the board that B and C are open until 2:00 a.m. – we know they are open until 2:00 a.m. if they decide to stay open. It won't be a hard thing to manage on our side.

Tina: I would suggest that they come in and apply for special use permit to stay open late similar to these businesses that come in asking for a 1-day E license for a special event. That way I can send notification over to the police department and have a paper trail in their file.

Mark Koenen: I suggest we consider this as an alternative and let staff digest it and bring back a proposal.

Chrmn. Rogina: I concur and staff has their marching orders. Are there any questions on this late night permit process?

Chuck: I have a question on Sections H and I, understanding that it needs rework, if an establishment comes before with a violation and the City Council chooses to reduce them from a 2:00 a.m. to a 1:00 a.m. permit, based on our recommendation, would there be proration for the cost of the permit refunded back to them or would that just be surrendered as part of their penalty?

Mark: For item H that is for a renewal, and you get a new permit separate and pay the appropriate fee corresponding with the permit that they are issued; so there would be a proration involved in that. For Item I, when you get in trouble with the law you may have a license or title

and you paid for that and are given it, but when you violate the law, you enter into a new set of rules and no one reimburses you for anything you've been given.

Ald. Lewis: When I was at the IML conference and attended a liquor session, they stressed to me that when you do things there has to be case law that backs up what your punishment is going to be. I might have some concern how we will put our criteria as to why we cannot give someone a permit and if that will stand up against case law?

Chrmn. Rogina: You are talking about Section J?

Ald. Lewis: We're going to recommend whether they keep to their 1:00 a.m. or 2:00 a.m. permit based on criteria that we deem as inappropriate?

Chrmn. Rogina: When you say based upon case law, here at this city at this point, there is no precedent. We are developing precedent as we go along and absent of that precedent, pending its reasonable, it would be upheld in an administrative review.

Atty. McGuirk: We haven't research that issue frankly, but there are some municipalities that have some permits such as Naperville. I would very much doubt if there is much law on revocation of late night permits. As a home rule unit I think we are reasonable and have criteria that would ultimately know if that would be sustained on an appeal to the liquor commission.

Ald. Lewis: Something I wrote down was that even though liquor is a privilege; you can't just take it away whenever you want to and that's because there has been case law where people go and say this is not fair when they appeal to the state.

Atty. McGuirk: I don't think anybody is suggesting an arbitrary removal of their license.

Ald. Lewis: Okay it's not the entire license, it's just the late night permit.

Atty. McGuirk: Even at that there would have to be some indication that they violated or haven't lived up to some of these criteria.

Chrmn. Rogina: Also in H and I there is indication that there will be due process and the licensee has the right to be heard. We have provided all sets of eyes here. You are advisors to me as liquor commissioner, so it seems to me that we have added an extra layer of protection for the licensee that we will be fair and diligent in making a decision. I'm not too concern with case law and in moving forward 1) given the fact that other municipalities have had late night permits put in, 2) we are home rule, and 3) we are not arbitrary capricious in our decision making; that if and when an appeal comes, we'll deal with it accordingly.

Ald. Payleitner: In Section B there are points of criteria listed and I like being able to go to one of these if there is a clear violation – it's stated right here.

Chrmn. Rogina: Keep in mind the issue in B is simply about issuing a late night permit; its not about revoking.

I am looking forward for final revisions of this draft and at our next meeting am looking for a recommendation to approve this to move forward to City Council and this would be in place as an ordinance before the end of the year. This is right in line with our timeline of what we want to accomplish by the end of the year. Kudos to the staff on this.

Now another item that the City Council will address is what are the costs of these base licenses and late night permits? I would only ask for input that you are in concurrence. The late night permits (1:00 – 2:00 a.m.) should be higher priced than the base license of midnight.

All: In agreement, but would like to see enough of a jump in price for the permits that it would make some licensees think twice about having only a midnight license.

Chrmn. Rogina: There are actual costs involved for licensees to be open until 1:00 – 2:00 a.m. and that's in the form of the extra city services that are provided to make sure the citizenry and town are protected.

Ald. Lewis: Just for clarity, a licensee cannot come and ask for a 1:00 a.m. permit during the week and a 2:00 a.m. on the weekend. It's one of the other?

Chrmn. Rogina: You are correct on that point. Maybe some licensees in town may want to come forward as an organization and say for the purpose of cost we concede to being closed Sunday through Thursday all at 1:00 a.m. and stay open on Friday/Saturday until 2:00 a.m. There are town such as Sycamore that do that.

5. Executive Session – None

6. Adjournment

Motion to adjourn by Ald. Lewis, second by Payleitner at 5:25 p.m.

Voice Vote: Unanimous; Nays: none. Chrmn. Rogina did not vote as Chairman. **Motion carried.**