

**MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
MONDAY, AUGUST 19, 2013**

1. Opening of Meeting

The meeting was convened by Liquor Commissioner Rogina at 4:34 p.m.

2. Roll Call

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

Members Absent:

Others Present: Brian Townsend, Chief Lamkin, Mark Koenen and Atty. John McGuirk

3. Discussion of Roles and Responsibilities of the Liquor Control Commission.

Liquor Commissioner Mayor Rogina: I am asking for some commentary from legal counsel. I want you to hear from him what the practice has been in St. Charles when we simply had a liquor commissioner, how the process may work, and how many formal hearings we've had in the last eight years. Chief Lamkin how many hearings where we provided evidence and testimony, court reporter, etc. have we had in the past eight years?

Chief Lamkin: That have actually been a full hearing – one.

Mayor Rogina: So I can conclude from that any citations that have been made by the Police Department has been a matter of what.

Atty. McGuirk: I haven't been involved in this but the way I read it is it starts with a citation from the Mayor's office as a report of an incident from the police. The city attorney drafts up a formal citation citing the statues of the ordinance violation and gives a notice of a hearing date. As I understand it that the time between the citation served and the hearing date, the overwhelming majority of the cases in the city are plea negotiations where the applicant comes in themselves or through their counsel and negotiate a resolution whether it's a fine, suspension, etc. Is that correct?

Chief Lamkin: There is fine, a suspension, and there is a provision in there to assign the city's portion of the attorney's fees related to the attorney cost to process the violation.

Mayor Rogina: That has been the past practice and now we fast forward to this point in time and we have four members of a Liquor Control Commission who are part of an advisory group

to the Commissioner to make recommendations as to what the penalties should be for violations. I want to find out if there are models out there that serve that particular purpose where, for example, serving a minor. It's cut and dry. They did it and are not denying it – it's stipulated to. Now we have the issue of these four advisors to the Commissioner having to provide some input. That concept that was just talked about doesn't fit here. So I asked John to research a situation/model where there is a commission and how it would be conducted.

Atty. McGuirk: I looked at several and for the most part there are some that the liquor commissions only deal with applications. So I looked for those that deal with applications and disciplinary proceedings which is what our ordinance anticipates and are more on point. In Wheaton they send out a violation notice but with that is an arraignment/plea form that gives the licensee the right to plead guilty or not guilty and if they plead guilty they can come before the commission and bring forth evidence on mitigation. I talked with the city attorney and much like here they have very few hearings on not guilty. For the most part people have been caught, aware of the violation, indicate they plead guilty, but they want to come in and tell you what their story is, how long they've been in business, have had no prior violations, this is the circumstances of this particular event, etc. In those instances they hear that evidence and there could be multiple disciplinary hearings on a single night; they go into executive session at that "hearing" and then come back and make a recommendation that is either followed or not followed by the Mayor.

Mayor Rogina: In this particular circumstance, and John referred to mitigation, they would be throwing themselves on the mercy of the Commission to say we concede the offense took place but there are mitigating factors and ask us to consider them. We would go in to executive session and discussed what penalty we should arrive at. I like this model particularly and offer that to you for your consideration. If anyone on the panel here thinks we should go about it differently in changing that model, we could run the risk that a few licensees thinking if I have to throw a blind plea on table and look for the mercy of the Commission – maybe I'll take my chance on a full blown hearing and maybe our number of hearings might increase. It's a point to consider. But looking at some best practice that's already in place is a good place to start.

Ald. Lewis: Explain to me what's a full blown hearing?

Atty. McGuirk: It's a situation where someone has pleaded not guilty and we have to hear evidence. I presume we would have our prosecuting attorney come in to present evidence, the police officer would testify to what occurred, they may present evidence through their attorney, and then a determination would be made. What I found in talking with other municipalities it's just a rare event because of a number of things. They realize they are caught and there is going to be a lot of cost associated with doing this. Because the City will tack on their costs of attorney fees, court reporter, police officer's time, etc.; so there is a lot of disadvantage to push it to that limit, but they can and have a right to, and you would be people to hear that.

Mayor Rogina: The burden of proof is by what standard? You think of a criminal situation beyond a reasonable doubt, but that's not the situation here.

Atty. McGuirk: More probably true than not true which is the preponderance standard.

Mayor Rogina: Where does the majority of the evidence lie?

Atty. McGuirk: Probably more true than not true.

Mayor Rogina: That's the standard that we would have to apply.

Ald. Lewis: And if we have a full blown hearing, we don't go into executive session?

Mayor Rogina: No, the hearing would be conducted right here.

Atty. McGuirk: Ultimately you could have the same procedure for whatever the penalty stage would be – here in open session.

Mayor Rogina: Once you have found guilt or innocence you have to establish a penalty which is separate.

Ald. Lewis: But we would be advisors to you.

Mayor Rogina: Yes, that is what the City ordinance has demanded. I want to go on record saying that you are not here just to throw words around. Your advice to me is very important here. In case of disciplinary it stops right here – it doesn't go to City Council. In case of applications for licenses, that does go to City Council, so we have to give them some recommendation or perhaps say here's the vote and then go from there. I have no problems going to City Council and say my four advisors said one thing, I vote another thing. That's the information we give to you and now you can decide. I have no problem with that. They should know how you weighed in.

Ald. Payleitner: I would like some clarification when you talked about doling out the penalties. Are we bound by state law? Is it specific or is it arranged?

Atty. McGuirk: The state statues talk about specific penalties, but we are home ruled and its merely a guideline.

Mayor Rogina: We are in the early stages and will be setting precedent as we move along to some extent. Is there any objection to us using this process when our first disciplinary hearing comes before us? So after we hear mitigating issues, when the licensee has admitted to guilt, the motion is whether or not we go into executive session to discuss this and come back with our decision.

Motion by Mr. Amenta, second by Ald. Payleitner to agree on Roles and Responsibilities of the Liquor Control Commission. **Voice Vote:** Ayes: unanimous; Nays: none. Mayor Rogina did not vote as Liquor Commissioner. **Motion carried.**

Ald. Lewis: Does this committee need any type of bylaws?

Atty. McGuirk: I don't know about bylaws but you can establish some procedural rules and we are talking about some of them right now.

Mayor Rogina: We'll shape this as we go along but in the meantime people will know where they stand on certain issues.

With regards to the ordinance, the responsibilities to review and recommend changes in this chapter to local liquor commissioner; what I see happening here down the line is any licensee that holds a 2:00 a.m. license would be something that would be reviewed annually by the City Council. Council can review a license any time they want but this would be a more formal process once a year where all of our 2:00 a.m. licenses are reviewed. We may very well start a conversation at a future meeting of what the criteria might be to recommend to City Council to move a license from 2:00 a.m. to midnight – this is just an example. We will keep records of meetings/proceedings open for public inspection according for FOIA act. I would like to establish a regular date to meet once a month. If we have no business then it's easy for us to cancel it. I would offer as a possibility the third Monday of each month at 4:30. This meeting would precede the second City Council meeting of each month. That way everyone has a sense of when these meetings take place.

All: Everyone agreed.

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

Due to the Lundeen's not being present, this item is tabled to September 16 Local Liquor Commission meeting.

5. Presentation of information regarding penalties for violations and establishing guidelines.

Mayor Rogina: What are the guidelines that we have to adhere regarding making decisions on offenses?

Atty. McGuirk: The statue provides these, but again it is not for Home Rule. We have pretty broad powers as being Home Rule and can go beyond this. The history of what the City has done is helpful too. The City talks about applying for the first offense not to exceed \$1,000, \$1,500 for the second offense, and \$2,500 for a third offense in a 12-month period. We can vary on that depending on the severity of the incident and you also have suspension powers. Those are your basic fine aspects. I don't know if we do a couple of fines first, then a suspension, or if something is so serious it could be suspension right out of the box. Those are the things that the commission has to think about.

Mayor Rogina: It's not a possibility that a liquor commission could invoke a suspension on the first offense depending of the first offense?

Atty. McGuirk: Exactly, I don't know if that is historically something that has happened. It could be a possibility.

Mayor Rogina: What about length of time of suspension?

Chief Lamkin: The most has been up to three days. If you look at a suspension that is greater than that, then it becomes a larger dialogue of whether the license should be revoked. If it gets to that level then we look at the license holder being problematic and you get some leeway in terms if you want to look at it in terms of aggravation or mitigation.

Mayor Rogina: You have the power in the Police Department based upon hearsay to issue a warning so that it's memorialized but there is no action before the Liquor Commission – correct?

Chief Lamkin: If a warning is something related to the liquor license, we prefer that warning has more power and more influence if comes from the Liquor Commissioner as opposed to the Police Department.

Mayor Rogina: So a warning letter would go out from me stating this is what happen at the scene but this is not going before a liquor hearing?

Chief Lamkin: Correct.

6. Discussion regarding differences between Restaurants, Restaurant/Taverns, and Taverns.

Mayor Rogina: This last item is a conversation, which you all have received a memo from Chief Lamkin and Brian Townsend, City Administrator, regarding the Commission making a distinction between restaurants, restaurants/taverns, and taverns. To highlight this, in the last year action has been taken to Government Operations Committee and ultimately Council regarding this matter. I would like to point to the fact that I request the city staff to provide some options for the Liquor Commission to consider and the Commission can then determine if a recommendation to modify the code can then be forward to City Council.

Brian Townsend: This memo attempts to summarize where the City has been on this issue over the past two years and some of the decisions that have been made regarding this. There continues to be assertions made by some folks that there are too many bars in St. Charles, too many bars in downtown St. Charles, and that the City ought to do something to reduce that number. That has not been the position of the City Council previously. In fact of the steps that have been taken in the past, there has been no mention or no desire to close any of the current establishments. It has been to design regulations that would apply on a prospective basis. As new establishments come in, how do we determine whether they are a restaurant,

restaurant/tavern, or a pure tavern? This sheet begins to summarize how the City distinguishes between those types of establishments up to this point.

The first way is through their hours of operation – are you open until midnight or open until 2:00 a.m.? The second is what type of food you serve when you serve it. Restaurants are required to have a full menu and serve until closing time. The restaurant/tavern classification requires a full menu but you can terminate that service early (11:00 is the current time to terminate) and after that you can serve primarily alcohol with snacks or a reduce menu. There are also distinctions made about holding bars whether you can have a holding bar and what the capacity of that is. For those of you unaware of what a holding bar is – it is basically where restaurants are to put people while they are waiting for a table as opposed to a bar where you can obtain or order food from a menu that is provided to you.

Mayor Rogina: At Francesca's you can eat at their bar, it is not a holding bar.

Brian: Not in the pure definition, no it's not. Up to this point those are the primary means we have used to distinguish between the different types of establishments. In 2012 there was consideration given in requiring restaurants/taverns to serve their full menu all hours that they were opened. So if they were to be open until 2:00 a.m. you had to be able to order food from their menu until 2:00 a.m. There were objections raised about that approach from several establishments. The Council considered those comments and decided to go with the 11:00 p.m. cutoff for serving food. After that they can serve just alcohol or a reduced menu. In the past there have been some individuals who suggested the City needs to consider some sort of standard in terms of gross revenue to define restaurants and taverns. 50% has been suggested because that is what Geneva has in their code. That is one option the Commission could discuss to consider. I would ask you keep in mind two points: 1) that would require some additional administration work from staff, not only to obtain records from the establishment but to perform the calculations to audit those figures on a regular basis, and 2) this is not fool proof. There are certain factors associated with the restaurant business that may not make a 50% standard possible. For example you go into Francesca's and order two pasta dinners at \$20 each and order a \$50 bottle of wine with your order, you are dramatically exceeding the threshold for that particular transaction. If you have enough of those you'll not be able to meet the 50% threshold. This is something that could be a potential problem with a 50% standard. The Chief and I have talked and we believe that the current standard works; that it does appropriate distinguish between the different types of establishments. We have not had any new hybrid establishments apply since these standards were put in place and haven't had a chance to apply these in a place like The Office or the Beehive. Most new licenses have been pure restaurants, they close at midnight, and pretty certain it is going to be a restaurant. We are not recommending any changes at this point, but are certainly open for discussion or consideration based on the Commission's recommendation and City Council's direction. There are three options we included in the memo: 1) leave things as they are today and allow current establishments to operate as they are, 2) consider any new establishments as based on the standards in the City code and make changes that mandate that any establishment that is a restaurant or restaurant/tavern keep their kitchen and serve their full menu the whole time they are open; that will result in some cost to those businesses and they may reject to that, and 3) you go with a hard standard as I just talked about – if you're a

restaurant you have to document on a quarterly, bi-annual or annual basis that more than some percentage of their gross revenue comes from food and the balance comes from alcohol revenue. We go so far in this recommendation that you can have two different standards. You can have a standard for restaurants and a standard for restaurant/taverns. This is an overview of where we've been and some options for the commission to discuss.

Mayor Rogina: What are the commissioners' views on this?

Chuck Amenta: At this point I like the way it is set up currently that there are different classifications. My concern for the establishments that have to offer a full menu for the entire evening they are open would increase cost. I wonder if that would hurt the businesses more and with the current health care changes coming in it might really pinch things with more or less hours. My opinion is I like the way it is.

Ald. Payleitner: I too like the way it is. I agree with the restaurants closing at midnight and restaurant/tavern 2:00 a.m. license. We've gone back and forth on the percentage issue and it's way too fuzzy. I can't go along with something that is not going to be cut and dry.

Ald. Lewis: This restaurant/tavern, how does this play into the conceal carry law? I thought we were going to have to determine if you could take conceal carry into someplace that was more than 50%. I thought I read something about this.

Brian: My understanding that conceal carry would be permitted in any establishment that did not exceed the 50% threshold in terms of alcohol and more than 50% alcohol conceal carry would be prohibited. In addition to private property of a restaurant or bar regardless of the percentage can prohibit conceal carry.

Ald. Lewis: Do we have to determine that or does the establishment do that?

Brian: That is not something the City would audit on a regular basis.

Mayor Rogina: Would that be a function of the state having some auditor? The state passes these rules but doesn't always provide any regulatory help.

Ald. Lewis: So if we are not going to determine that there could be concealed carry in most establishments unless they choose not to.

Chief Lamkin: They could do that but we would encourage them not to.

Mayor Rogina: That's a good point. Could the City send out letters to establishments strongly encouraging them to prohibit this?

Atty McGuirk: There is no requirement for the City to monitor it. It's an individual decision on the part of the establishment. Whether the City wants to make a policy decision to discourage this, that's up to you. It's enough for them to know there is an alternative.

Chief Lamkin: Each business should check with their individual insurance carriers and may be let the insurance end play out.

Ald. Lewis: Regarding holding bars, that was new information to me that you could not have food at a holding bar, is that something that is in our ordinance? I've sat in many establishments and had my dinner at a bar due to lack of seating.

Brian: It depends on the operation of the establishment. Some operate as pure holding bars where you can't order food off to the side but could sit there and have a drink while waiting for a table. That's where that 20% seating in a holding bar cannot be exceeded. You can walk into Alley 64 and they have a very long bar with a lot of seats. This is not a holding bar because you can sit there and consume food. It is considered a seat in the restaurant.

Ald. Lewis: As far as the hours go, I am not convinced that just because they open and have a whole meal that solves what we are trying to accomplish. I wouldn't change it.

Bob Ghem: I don't think we should change it. It seems to work, but there is always going to be that outlier that will cause us to look at something different. Also with the conceal carry and the insurance, I think that would throw a huge financial burden on people to prove they fall into that category if they used gross receipts. It would put an additional burden on the City's resources as well. What's in place right now seems to work and it is enforceable.

Mayor Rogina: Going forward we talk a lot about the 2:00 a.m. issue being a privilege given to our licensees who what 2:00 a.m. and that we'll be vigilant on those licenses. To that extent, at a future meeting, this Commission needs to craft the advisory guidelines that should be followed to the City Council as to when should a 2:00 a.m. license be pulled and set back to midnight. I agree with everyone that you leave the current rules in place as they are, but we could add that it's memorialized in the ordinance and we can, as an advisory commission, craft language that says here is what we think about a license being pulled back from 2:00 a.m. to midnight. That is a very significant and heavy hammer that we would advise when a problem has developed. We can build that in there without having to change this all around.

In discussion with Brian we came to this point, if we decide to administer penalties to a licensee during a course of a given year and then at the end of the licensing year comes and we're looking at a decision to revoke a 2:00 a.m. license or not, that to me could be the penalty. There should not be a double jeopardy on fines. The approach from our standpoint is here is the evidence and your 2:00 a.m. license is being taken away. This is to be discussed at a future meeting. The Council has implied it that perhaps no additional 2:00 a.m. licenses are going to be given to the downtown area.

Ald. Lewis: There are probably cases where establishments are cut and dry and then have incidences where there are several incidences in one night where you don't really know where they came from. You can't pinpoint it to any particular establishment.

Mayor Rogina: We have the right to advise City Council that maybe we have to hire more police. Maybe put a permanent officer downtown on Saturday nights. I do think the police do a wonderful job. I'm just saying we offer additional help and this is something to put on our next agenda.

Chuck: You had talked about waiting to the end of the year to maybe impose revoking the 2:00 a.m. license; might we want to consider a certain number of violations and egregious overstep of these violations and impose that almost immediately.

Mayor Rogina: I would go to legal counsel on that. Does the Commissioner have the power on a 2:00 a.m. license that has been granted on an annual basis to move that license from 2:00 to midnight as a penalty?

Atty. McGuirk: I don't know, I'll have to research that. It seems the license is the 2:00 a.m. and pending revoking the license I am not sure you have the right to modify the license because that is in effect what you are doing. If you had a separate category or permit for the 2:00 a.m. that might be a different story. That's just without research.

Ald. Payleitner: That's why it has to come up annually because that is when the license is issued.

Ald. Lewis: To reiterate I think our purpose is that we have a safe, vibrant downtown that wants to bring families and people to our community and enjoy themselves.

Mayor Rogina: Chief any other comments? You're going to be an integral part in this operation here going forward. If we keep this process to a monthly meeting, do you see us impeding the flow, might time get stale? Here's a citation and we're three weeks from another meeting?

Chief Lamkin: Worst case scenario we get a citation the day after your last meeting and it would just be further out. I don't necessarily see that impeding. Sometimes time helps the flow of the process.

Chuck: Should it be written in that you have the authority to do something without consulting this commission. That way if something does come up and needs immediate action, we don't have to get together?

Atty. McGuirk: You're changing the procedure now. We have a liquor commissioner now that does everything on their own, in this scenario it goes to the commission. I don't think you hold back any selective rights to suspend. You have to be consistent. The warrants that the Chief referenced would not have to come here since they are not citations.

Mayor Rogina: If we are going to create a commission I think it's important that all of you participate in that process. If we have to call an emergency meeting, we'll do so.

Atty. McGuirk: You also need to give a licensee reasonable notice according to statues or city ordinance. Some of the procedures that I've seen says we are sending out this arraignment form and if it doesn't come back in 7 days we'll presume there is going to a be a hearing. So you need that timeframe.

Motion to adjourn by Ald. Payleitner, second by Mr. Ghem at 5:28 p.m.

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