

**AGENDA  
CITY OF ST. CHARLES  
LIQUOR CONTROL COMMISSION MEETING**

**MONDAY, SEPTEMBER 16, 2013  
CITY COUNCIL CHAMBERS @ 4:30 PM  
2 E MAIN STREET**

1. Call to Order.
2. Roll Call.
3. Motion to accept and place on file minutes of the Liquor Control Commission meeting held on August 19, 2013.
4. Presentation of a request from Lundeen's Liquors to offer drive-thru window service at 1315 W Main Street.
5. Discussion of Liquor License Late Night Permit.
6. Filling Station Liquor Violation Notice.
7. Other Business.
8. Executive Session.
9. Adjournment.

**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 statutes 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

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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.

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**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 statutes 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.**

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**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 statute 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.

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

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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

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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.



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**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.

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**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.

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**Atty. McGuirk:** You also need to give a licensee reasonable notice according to statutes 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 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.**



## AGENDA ITEM EXECUTIVE SUMMARY

Title:

Presentation of a Request from Lundeen's Liquors to Offer Drive-Thru Window Service at 1315 W Main Street

Presenter:

Mayor Rogina

*Please check appropriate box:*

Government Operations

Government Services

Planning & Development

City Council

Public Hearing

X

Liquor Control Commission

Estimated Cost:

Budgeted:

YES

X

NO

If NO, please explain how item will be funded:

### Executive Summary:

David Lundeen will be presenting a proposal for the new store location at 1315 W Main Street.

### Attachments: *(please list)*

City Code 5.08 Alcoholic Beverages, page 5.08-24 item Q

Lundeen's Liquors Relocation Proposal

Site Maps

### Recommendation / Suggested Action *(briefly explain):*

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

*For office use only:*

*Agenda Item Number: 4*

## ALCOHOLIC BEVERAGES

food store, drug store mass merchandiser, clubs, hotels and motels may remain open for business during such hours, but no alcoholic liquor may be sold or consumed during such hours. The licensee and any of its employees and no other persons shall be allowed to remain on or about the licensed premises to clean up or perform maintenance on the premises.

2. All premises in which alcoholic liquors are sold at retail for consumption on the premises and which are located below ground level shall have visible access to the interior for purposes of police inspection and the after hours safety of the occupants. Such visible access may be through an exterior door with a window measuring not less than eight inches by eight inches.
3. It is unlawful for any person to consume any alcoholic liquor on any premises licensed under the provisions of this chapter during the hours when the sale of such alcoholic liquor is prohibited by this chapter, including, but not limited to the licensee, its officers, agents and employees.

(Ord. 2010-M-29 § 1; Ord. 2004-M-12 § 1 ; Ord. 2000-M-104 § 1; Ord. 1995-M-53 § 5 & 6; Ord. 1995-M-22 § 1; Ord. 1988-M-73 § 1; Ord. 1988-M-72 § 1; Ord. 1987-M-34 § 2; Ord. 1986-M-32 § 1; Ord. 1985-M-32 § 2; Ord. 1984-M-69 § 1; Ord. 1984-M-36 § 3; Ord. 1984-M-37 § 4; Ord. 1982-M-49 § 1; Ord. 1976-M-42 (part); Ord. 1976-M-14 § 2; Ord. 1976-M-5 (part): prior code § 24.033 & 24.034.)

P. Employment of Underage Persons.

1. It shall be unlawful for any licensee, or any officer, associate, member, representative, agent or employee of such licensee, to engage, employ or permit any person under the age of twenty-one (21) years to attend bar and/or to draw, pour or mix any alcoholic liquor in any licensed premises; provided, that the provisions of this subsection shall not be construed to prevent the employment of persons who are at least sixteen (16) years of age as waiters or waitresses for the purpose of serving food and alcoholic liquor on the licensed premises.
2. It shall be unlawful for any licensee, or any officer, associate, member, representative, agent or employee of such licensee, to engage, employ or permit any person under twenty-one (21) years of age to sell any alcoholic liquor in any licensed premises.

(Ord. 2010-M-29 § 1; Ord. 2004-M-43 § 1; Ord. 2004-M-12 § 1.)

Q. Licenses – Curb/Drive-Through Service.

No license issued under this chapter authorizes the sale, gift or delivery of alcoholic liquor utilizing curb service, drive-through window, or any other similar methodology. All such sales, gifts or deliveries are prohibited.

R. Harboring Intoxicated Persons.

No licensee under the provisions of this chapter, either individually or through agents or employees, shall harbor or permit any intoxicated person or persons to loiter on the premises, or to permit any conduct, which shall tend to disturb the peace and quiet of the neighborhood.

(Ord. 2010-M-29 § 1; Ord. 2004-M-12 § 1; Ord. 1976-M-5 (part): prior code § 24.036.)

S. Prohibited Sales.

1. No licensee nor any officer, associate, member, representative, agent or employee of such licensee shall sell, give or deliver alcoholic liquor to any person under the age of twenty-one (21) years, or to any intoxicated person or to any person known by him or her to be under legal disability or in need of mental treatment.
2. For the purpose of preventing the violation of this section, any licensee, or his agent or employee, shall refuse to sell, deliver or serve alcoholic liquor to any person who is unable to produce adequate written evidence of identity and of the fact that he or

*Thank you for participating in the City's pre-application meeting. Pre-application meetings are **not** intended to be a comprehensive review of your proposal. At this early stage we try to help you identify some major issues related to the project, based on limited information. We also provide general guidance as to contacts and application procedures. We will conduct a more comprehensive review after you submit applications and detailed plans, at which time other issues may arise that, have to be addressed before the project is approved (or permits are issued as the case may be).*

**7/18/2013 Pre-App:  
1315 W. Main Street  
(Lundeen Liquors Relocation and Proposed Special Use for a Drive-Through)**

Please forward comments/corrections to: Matthew O'Rourke, 630-762-6924  
morourke@stcharlesil.gov

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**Participants**

City of St. Charles

Matthew O'Rourke, Planning Division

Tom Bruhl, Electric Division

Bob Vann, Building & Code Enforcement Division

Chris Tiedt, Development Engineering Division

Asst. Fire Chief, Kevin Christensen, Fire Department

Lt. Brian Byrne, Fire Department

**Applicant**

David and Julie Lundeen, Lundeen Liquors

**Applicant Presentation**

Ms. Lundeen explained that they have owned the property since the mid 1980's and would like to relocate their existing store in the Valley Shopping Center to this site. They also explained that they would like to add a drive-through lane with a pick-up window to the property. Ms. Lundeen stated that their store located in Sycamore, IL has a drive-through window. Ms. Lundeen stated that they are planning to use the existing footprint of the building.

Ms. Lundeen also stated that there is a known environmental issue with the lot in that a gas station formerly operated on this site and when the gas tanks were removed there was a leak. She stated that the site has now been cleaned and that they are waiting on the NFR (No Further Remediation).

Ms. Lundeen stated that there is no problem moving their liquor license from the existing location to this property and that they are seeking approval from the City Council for the drive-through. Ms. Lundeen stated that she has spoken with the Mayor and Police Chief and that she has spoken with 3 aldermen and believes she has their support. Mr. O'Rourke asked if she meant support for the liquor license. Ms. Lundeen stated that she was referring to the drive-through approval and that the liquor license is not an issue because it's the same license. Mr. O'Rourke stated that due to the change in scope by adding the drive-through, he understood that the applicant will need to get the change in liquor license approved by the Liquor Commission.

Mr. O'Rourke stated that he wanted the applicants to be aware that this would need to get approved.

Mr. O'Rourke explained that the purpose of the meeting is to provide information, identify any major issues, and provide guidance on zoning and application procedures. All discussion is confidential and is not binding. No formal approval is associated with this process.

### **Community Development Department**

#### **Planning Division**

Mr. O'Rourke stated that the Drive-Through Facility is considered a Special Use by the St. Charles Zoning Ordinance and that this would need approval from the City Council. He also stated that City Council approval would be at the end of the process and that the Special Use requires a public hearing in front of the Plan Commission.

Mr. O'Rourke stated that the drive-through required 5 stacking spaces. He also stated that staff will need to verify that there are enough off-street parking spaces on the property due to the change in use to Retail Sales.

Mr. O'Rourke asked if the applicant is planning any exterior modifications to the building. Mr. Lundeen stated that they are only adding the new pick-up window for the drive-through. Ms. Lundeen stated that there is a window in this location and that will be removed to become the pick-up window.

Mr. O'Rourke asked if there are plans to repave the parking lot. Mr. Lundeen stated that they would like to do that next year, but right now they only have funds secured for the drive-through addition and adding the coolers to the building. O'Rourke stated that he wanted them to be aware that if they ever reconstruct the parking lot they would have to meet the current standards of the Zoning Ordinance. In particular, 10% of the interior of the parking lot is required to be greenspace. Mr. O'Rourke stated that the City requires building foundation landscaping and for this proposal it would be required where there are modifications to the building where the drive-through lane and pick-up window are proposed.

Mr. O'Rourke stated that the next step in the process for the drive-through would be to submit an Application for a Special Use. Once this application is submitted, staff will review the site plans and take the project through the public process.

Later in the meeting, Mr. O'Rourke stated that after hearing Mr. Tiedt's comments, it came to his attention that the property is less than 1-acre in size. He stated that in the BL –Local Business Zoning District that a drive-through is required to be on a property of 1-acre or larger. Therefore, the Special Use for the Drive-Through Facility would not meet the standards of the Zoning Ordinance.

#### **Building and Code Enforcement Division**

Mr. Vann stated that when the applicant speaks to their electrician they should get a detailed description of their electrical needs.

## **Development Engineering Division**

Mr. Tiedt said that since the property is under 1-acre that they would not have to meet the Kane County Stormwater Ordinance. Mr. Tiedt also stated that they will need to review grading plans to see how the water would drain off of the property.

Mr. Tiedt read some comments prepared by Mr. Bernahl of the Public Work Engineering Division. Mr. Bernahl wanted to inform the applicant of the known environmental issues at the site and that there has been some recent activity in regards to this issue with EPA attorneys.

Mr. Tiedt suggested that the applicant consider connecting this property with the alley to the southeast of the property.

Mr. Tiedt asked if they planned on utilizing the same water and sewer services. Mr. Lundeen said they did intend to use the same services. Mr. Tiedt stated that they will need to locate these services and that the City's GIS services shows that one of the services may be located where the drive-through is proposed. Ms. Lundeen asked how they could find out the exact location of the service. Mr. Tiedt stated that they could try to estimate based off the location of manholes, but that the City does not locate private services. He also stated that plumbers can trace the services.

## **Public Works Department**

### **Electric Division**

Mr. Bruhl stated that the existing electric service may not be satisfactory and that he believes it is only a 200 amp service which is closer to a residential service. He stated that if they need a full 208 service that a new service will need to be run which is about a \$10,000 project. Mr. Bruhl stated that as soon as the applicant finds an electrician to have them call him to figure out the details.

Mr. Bruhl also stated that the current overhead service is over the location of the proposed drive-through. Mr. Bruhl stated that the service may not be high enough for the drive-through and will need to be raised or relocated. The relocation will also require a new service.

### **Fire Department**

Lt. Byrne stated that the building does have a fire alarm system but is not sprinkled. He stated that a change in the use category of the business would require that a sprinkler system be installed. He stated that the current use and the proposed use are close enough that he does not believe that the sprinkler system would be required.

### **Additional Business**

Ms. Lundeen asked how long a process like this would typically take. Mr. O'Rourke stated that the typical length for this type of proposal would be 60 to 90 days. Mr. O'Rourke reiterated that as of right now they would not be able to submit the Special Use for the Drive-Through Facility since it does not meet the Zoning Ordinance.



Mr. O'Rourke stated that the only avenue he can foresee is to petition the City to amend the Zoning Ordinance to modify or remove the minimum 1-acre requirement. He cautioned that this would mean changing the Zoning Ordinance for all properties zoned BL and that this would be a lot more for the City Council to consider.

Ms. Lundeen asked if they could move forward with moving the store to this location and consider the drive-through later. Mr. O'Rourke stated that the liquor store is considered a Retail Sales use which is permitted in the BL Local Business, so the store itself would only need to get a building permit for any internal changes. Mr. Vann added that once they get their information for the changes to the electric etc. that they can submit for a building permit.

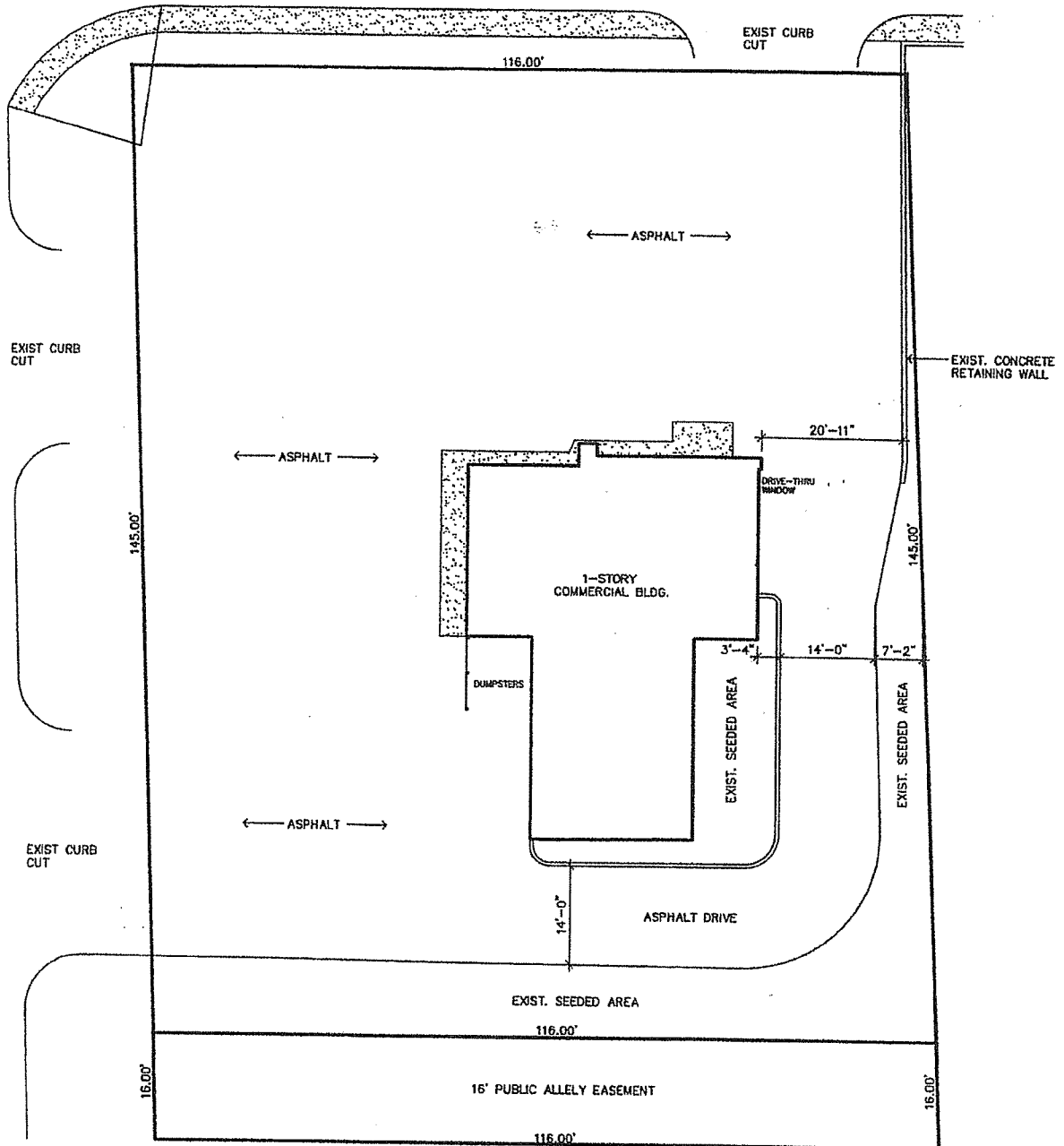
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Distribution:	All participants	City Administrator
	Mayor and City Council	Plan Commission Chair



S. 14TH STREET

WEST MAIN STREET



SITE PLAN

SCALE: 1/16" = 1'-0"



LUNDEEN'S LIQUORS  
1315 West Main Street

Tim O'Malley, Architects  
St. Charles, IL 60174  
Ph: 630-762-1062



## AGENDA ITEM EXECUTIVE SUMMARY

Title: Discussion Regarding Liquor License Late Night Permit

Presenter: Mayor Rogina

*Please check appropriate box:*

☐ Government Operations

☐ Government Services

☐ Planning & Development

☐ City Council

☐ Public Hearing

☒

Liquor Control Commission (9/16/13)

Estimated Cost:

Budgeted:

☐ YES

☐ NO

If NO, please explain how item will be funded:

### Executive Summary:

St. Charles Liquor Control Commission is interested in the model that the City of Naperville enforces regarding the closing hours of their liquor license holders through a late night permit process. The attached summary gives more detail of Naperville's Liquor Code and the Liquor Control Commission will request recommendation if the City of St. Charles were to move in this direction.

### Attachments: *(please list)*

Liquor License Late Night Permit Memo  
Naperville City Code, Chapter 3 "Liquor and Tobacco Control"

### Recommendation / Suggested Action *(briefly explain)*:

Requesting direction from the Liquor Control Commission on adopting the Late Night Permit concept enforced by Naperville's City Code.

*For office use only:*

*Agenda Item Number: 5*

## Police Department

# Memo

Date: 9/10/2013  
To: Members of the Liquor Commission  
From: Mark Koenen, City Administrator and Chief Jim Lamkin  
CC: Mayor Ray Rogina  
Re: Liquor License Late Night Permit

---

Mayor Rogina has indicated interest in modifying the St. Charles liquor license code with closing hours similar to how the City of Naperville has handled theirs with a late night permit. We will summarize their code and provide recommendation if the City of St. Charles were to move in this direction.

1. Naperville has License Classes identified by letter from A-T.
2. They do not limit the number they authorize; they address each license request based on their application process.
3. For purposes of this review, Section 3-3-11 Section 2 is relevant to the St. Charles discussion. Section 2 is for **Class B Restaurant and Taverns**.
4. The **Class B** license authorizes alcohol sales until **11:00 pm** on Sundays through Saturdays.
5. The Class B **primary business to be conducted on premises is service of meals**. A full menu is indicated, including entrees and side dishes, and a fully staffed and operational kitchen, is required until 9:00 pm. On Sunday through Thursday, and 10:00 pm on Friday and Saturday. The only exceptions are Thanksgiving and Christmas.
6. Within the **Class B license, a Late Night Permit** is an additional option.
  - a. The late night permit is issued as a condition of a Class B Restaurant and Tavern license and **authorizes the holder of a Class B license to serve alcohol from 11:00 pm to 1:00 am Monday-Friday and 2:00 am Saturday and Sunday without meal and kitchen requirements**.
  - b. The Naperville City Council may modify the number of Late Night Permits upon either a petition to the City Council by a Class B license applicant or the revocation, surrender, expiration without renewal, or abandonment of a Class B license or late night permit.

- c. Upon petition to the Naperville City Council by a Class B liquor license applicant to modify the number on late night permits, the City Council may, but is not limited to, consider the following criteria:
  - i. The surrounding land uses;
  - ii. The business concept;
  - iii. The proximity to other liquor establishments;
  - iv. The applicant's prior liquor business experience;
  - v. The public's health, safety and welfare;
  - vi. Public safety resources;
  - vii. Market conditions;
  - viii. And any other relevant criteria to the issuance, establishment and administration of a retail liquor license.
- d. The **nonrenewal, suspension or revocation** of a late night permit and the licensee's **right to a hearing** is subject to the provisions of this Chapter.

In Section 3-3-24-4 of the Naperville Code, there is language similar to St. Charles Code, essentially requiring that no fine, suspensions, revocation or nonrenewal shall be imposed except after a public hearing by the local Liquor and Tobacco Commission, unless such hearing is waived by the licensee. There are also provisions in the Naperville Code similar to St. Charles Code for the recovery of legal costs and fees from the licensee as part of the hearing process.

#### **Considerations:**

- 1. This could move all of the St. Charles B and C licenses to a set closing time earlier than the present 2:00 am seven days a week.
- 2. The earlier closing time could be set at 11:00 pm or midnight. While Naperville sets their normal closing at 11:00 pm, a midnight normal closing time would likely be more appealing to restaurants who could conclude normal business by midnight without the need for the late night permit.
- 3. Only those license holders interested in staying open later would apply for the late night permit. The permit would be considered and granted based on their operations. (The Naperville Code has a variety of good

considerations, included in c. above). This would likely help limit the required review by the city, the police department and the Liquor Commission since the applicant pool for the permit will probably be less than all of the current St. Charles B and C license holders.

- St. Charles could offer a 1:00 am option and a 2:00 am option leaving the decision up to the businesses depending on how late they wish to stay open.
  - The Liquor Commission will need to decide criteria for review and decide what manner of operation is acceptable to grant or deny the late night permit.
4. Any suspension or revocation of the permit would be an option before suspending or revoking the actual license itself if necessary.
  5. Any determination to not renew, suspension or revocation would still require a hearing, which would follow a similar process that would be done for any other violation. Those final decisions would likely still be subject to any appeal either by the Illinois Liquor Control Commission or Circuit Court for Administrative Review.
  6. It does not change the difficulty to tie any publicly intoxicated people to any license holder any easier than we have at present. And patrons could still be over served by a license holder which does not have the late night permit.
  7. Our present B and C license holders have the option to close earlier at present if they wish. I would expect if St. Charles had the standard closing time at midnight as opposed to 11:00 pm, there will be less late night permit applications.
  8. Naperville charges a fee for the permit above the standard license fee, which is an option for St. Charles to consider as well. There would need to be some costs attached to the permit since it will require additional staff time processing the permit request., otherwise all of them could apply for it whether intending to use it or not.

It is beneficial for the Liquor Commission to review this concept and come to a recommendation to be taken to the Government Services Committee as soon as practical. Any changes to the liquor code should be accomplished no later than early 2014 prior to the renewal process which should commence in March for May 1 renewals.





TITLE 3 - BUSINESS AND LICENSE REGULATIONS

CHAPTER 3 LIQUOR AND TOBACCO CONTROL

**CHAPTER 3 LIQUOR AND TOBACCO CONTROL**

SECTION:

3-3-1: DEFINITIONS:

3-3-2: LOCAL LIQUOR AND TOBACCO CONTROL COMMISSIONER:

3-3-3: LICENSE REQUIRED:

3-3-4: APPLICATION FOR LICENSES:

3-3-5: RESTRICTIONS ON LIQUOR LICENSES:

3-3-6: RECORD OF LICENSES:

3-3-7: LIQUOR LICENSE; INSURANCE REQUIREMENTS:

3-3-8: TERM OF LICENSE; RENEWALS:

3-3-9: TRANSFER OF LICENSE:

3-3-10: CIGARETTE AND TOBACCO DEALER'S LICENSE FEE:

3-3-11: LIQUOR LICENSES, PERMITS, CLASSIFICATION AND FEES:

3-3-12: INITIAL LIQUOR LICENSE APPLICATIONS, FEES:

3-3-13: NUMBER OF LIQUOR LICENSES AND PERMITS ISSUED:

3-3-14: INCOMPLETE OR INACCURATE APPLICATIONS:

3-3-15: ENTERTAINMENT, FEES:

3-3-16: DISPOSITION OF FEES AND FINES:

3-3-17: CONDITIONS OF LIQUOR LICENSE:

3-3-18: LIQUOR MANUFACTURERS AND DISTRIBUTORS, RESTRICTIONS:

3-3-18-1: LOANS AND CREDIT:

3-3-18-2: FURNISHING EQUIPMENT OR SIGNS TO RETAILERS:

3-3-19: LOCATION, BUILDING AND PREMISES RESTRICTIONS:

3-3-19-1: LOCATION RESTRICTIONS, LIQUOR:

3-3-19-2: VIEW FROM STREET:

3-3-19-3: LOCATION RESTRICTIONS, TOBACCO:

3-3-19-4: SANITARY CONDITIONS:

3-3-19-5: PREMISES RESTRICTIONS:

3-3-20: PERSONNEL RESTRICTIONS, LIQUOR LICENSES:

3-3-21: PROHIBITED ACTS AND CONDITIONS:

3-3-22: PERSONS OF NONAGE, LIQUOR:

3-3-22-1: SALES TO PERSONS OF NONAGE AND HABITUAL DRUNKARDS, MENTAL INCOMPETENTS AND INTOXICATED PERSONS:

3-3-22-2: PURCHASE, POSSESSION, OR ACCEPTANCE OF GIFT BY PERSONS OF NONAGE; PRESENCE RESTRICTION; IDENTIFICATION CARDS:

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

3-3-22-3: PARENTAL AND VICARIOUS RESPONSIBILITY:

3-3-23: MINORS, SIGNS, TOBACCO:

3-3-23-1: MINIMUM AGE TO SELL TOBACCO PRODUCTS:

3-3-23-2: PURCHASES OF TOBACCO PRODUCTS BY MINORS PROHIBITED:

3-3-23-3: CERTAIN FREE DISTRIBUTIONS PROHIBITED:

3-3-24: VIOLATION, NONRENEWAL, SUSPENSION AND REVOCATION OF LICENSES AND PERMITS:

3-3-24-1: VIOLATION OF RETAILERS' OCCUPATION TAX ACT:

3-3-24-2: VIOLATION OF FOOD AND BEVERAGE TAX:

3-3-24-3: RESPONSIBILITY FOR AGENTS AND EMPLOYEES:

3-3-24-4: SUSPENSION, REVOCATION, AND NONRENEWAL HEARINGS:

3-3-24-5: ASSESSMENT OF COSTS OF HEARINGS:

3-3-24-6: FORFEITURE OF FEES:

3-3-24-7: USE OF PREMISES AFTER REVOCATION:

3-3-24-8: PENALTY:

#### **3-3-1: DEFINITIONS:**

All words and phrases used in this Chapter, not otherwise defined herein, and which are defined in "An Act Relating To Alcoholic Liquors", approved January 31, 1934, as amended <sup>[10]</sup>, shall have the meanings accorded to such words and phrases in said Act. Unless the context otherwise requires, the following terms as used in this Chapter shall be construed according to the definitions given below:

ALCOHOLIC LIQUOR:	Any spirits, wine, beer, ale or other liquid manufactured, produced or distilled for or fit for beverage purposes that contains any amount of alcohol including beverages commonly known as "near beer", "nonalcoholic beer", or "nonalcoholic wine" whose taste, color, odor and consistency are similar to the alcoholic beverages known as beer and wine and, except for the reduced alcohol content, is marketed as being similar to beer or wine.
BEER:	A beverage obtained by the alcoholic fermentation of an infusion or concoction of barley or other grain, malt, and hops in water, and includes, among other things, beer, ale, stout, lager beer, porter and the like.
BREWERY PUB:	A person, or other entity, who or which manufactures "beer" as defined herein,

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

	only at a designated premises, for the sole purpose of sale and consumption only at and within such premises and who stores such beer at the designated premises for such sale and consumption and who is authorized to sell solely at retail.
CLUB:	A corporation, organized under the laws of this State, not for pecuniary profit, solely for the promotion of some common object other than the sale and consumption of alcoholic liquors which conforms to the definition of a club in 235 Illinois Compiled Statutes 5/1-3.24.
CRAFT BEER:	Beer from a craft brewery that (1) produces less than two million (2,000,000) barrels of beer annually; (2) is less than twenty-five percent (25%) owned or controlled by an alcoholic beverage industry member that is not a crafter brewer; and (3) produces a significant volume of either malt beers or beers that use adjuncts to enhance, rather than to lighten, flavor.
DOWNTOWN:	The definition of "downtown" as provided for in <u>Title 3</u> , Chapter 1, Section 9 (Food and Beverage Taxes) of the Naperville Municipal Code, as amended from time to time.
HOTEL AND TAVERN OR MOTEL AND TAVERN:	Every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which twenty-five (25) or more rooms are used for the sleeping accommodations and dining rooms being conducted in the same building or buildings in connection therewith, and such building or buildings, structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity, and where meals are actually and regularly served; provided, that no hotel or motel licensed alone as such shall sell alcoholic liquor except with meals.
HOTEL OR MOTEL:	Every building or other structure, kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which twenty-five (25) or more rooms are used for the sleeping accommodations and dining rooms being conducted in the same building or buildings in connection therewith, and such building or buildings, structure or structures being provided with adequate and sanitary kitchen and dining room equipment and capacity, and where meals are actually served and regularly served; provided, that no hotel or motel licensed alone as such shall sell

# TITLE 3 - BUSINESS AND LICENSE REGULATIONS

## CHAPTER 3 LIQUOR AND TOBACCO CONTROL

	alcoholic liquor except with meals.
LATE NIGHT PERMIT:	Authorizes the retail sale of alcoholic liquor for consumption on the premises from eleven o'clock (11:00) p.m. to one o'clock (1:00) a.m. Monday through Friday and eleven o'clock (11:00) p.m. to two o'clock (2:00) a.m. Saturday and Sunday without meal and kitchen requirements. The late night permit shall only be issued as a condition to a Class B—Restaurant and Tavern liquor license classification subject to the restrictions set forth in this Chapter.
LEGITIMATE THEATER HOUSE:	A premises open to the public for the purpose of providing a venue for theatrical presentations, based on recognized literary works of a dramatic, comedic or musical nature and format, produced in the form of a musical, dramatic, or comedic play (excluding standup comedy routines) of a noncinematic nature utilizing the talents of live actors.
MINOR:	Any person who has not attained the age of eighteen (18) years.
NIGHTCLUB:	Every building or other structure kept, used, maintained, advertised and held out to the public as a place permitting any of the activities requiring an entertainment permit under Section 3-3-15 of this Chapter.
PERSON OF NONAGE:	Any person not yet twenty-one (21) years of age.
RECREATIONAL FACILITY:	Shall include, but not be limited to a public place kept, used, maintained, advertised and held out to the public as a golf course, bowling alley or billiards having a minimum of ten (10) regulation billiard tables, whether such place is open to the public in general or only available to those who have paid a membership fee. At least sixty percent (60%) of the facility's total annual revenue shall be derived from sources other than the sale of alcoholic beverages.
RESTAURANT:	Any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals actually are served and regularly served, without sleeping accommodations, such space being provided with adequate and sanitary kitchen licensed and certified pursuant to DuPage County Food Service Sanitation Code, 77 Illinois Administrative Code 750 and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. The intent of this definition is that the primary business conducted on premises to be licensed as a restaurant shall

# TITLE 3 - BUSINESS AND LICENSE REGULATIONS

## CHAPTER 3 LIQUOR AND TOBACCO CONTROL

	be the service of meals. No restaurant licensed as such shall sell alcoholic liquor except with meals.
RESTAURANT AND TAVERN:	Any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals actually are served and regularly served, without sleeping accommodations, such space being licensed and certified pursuant to DuPage County Food Service Sanitation Code, 77 Illinois Administrative Code 750 and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. The intent of this definition is that the primary business conducted on premises to be licensed as a restaurant and tavern shall be the service of meals. A full menu, including entrees and appropriate side dishes, shall be available at all times sales are being conducted until nine o'clock (9:00) p.m. Sunday through Thursday, and ten o'clock (10:00) p.m. Friday and Saturday.
RETAIL SALE:	The sale for use or consumption and not for resale.
SALE:	Any transfer, exchange or barter in any manner, or by any means whatsoever, including the transfer of alcoholic liquors by and through the transfer or negotiation of warehouse receipts or certificates, and includes and means all sales made by any person, whether principal, proprietor, agent, servant, or employee. The term "sale" includes any transfer of alcoholic liquor from a foreign importer's license to any importing distributor's license, even if both licenses are held by the same person.
SCHOOL:	An educational institution, including preschools and daycare centers, but not including undergraduate or postgraduate colleges and universities, having a formal curriculum consisting of recognized academic subjects.
SHOPPING CENTER:	An integrated group of commercial establishments which is planned as a unit with customer and employee parking provided on site, provision for goods delivery separated from customer access, aesthetic consideration and protection from the elements.
SPECIALTY MARKET:	A premises whose primary and principal business is the sale of perishable foods including fresh meat, fish, dairy products, produce, and bakery products and having a minimum floor area of not less than thirty-five thousand (35,000) square feet and which also provides for a restaurant and tavern as accessory uses.
SPECIALTY WINE	A premises at which only vinous beverages, as defined herein, vinified for the

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

SHOP:	licensee (at its own winery) bearing only its private label, and craft beer, as defined herein, and sold and offered for sale at retail to persons on the premises for consumption off the premises.
SPIRITS:	Any beverage which contains alcohol obtained by distillation mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.
STATE COMMISSION:	The Illinois Liquor Control Commission, as defined under 235 Illinois Compiled Statutes 5/3-1.
SYNTHETIC ALTERNATIVE DRUG:	Any product containing a synthetic cannabinoid, stimulant or psychedelic/hallucinogen, as those terms are defined herein such as, but not limited to, the examples of brand names or identifiers listed on Exhibit "A" <sup>[11]</sup> attached hereto and incorporated herein.

SYNTHETIC CANNABINOID:	Any laboratory-created compound that functions similar to the active ingredient in marijuana, tetrahydrocannabinol (THC), including, but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including isomers, esters, ethers, salts, and salts of isomers) containing a cannabinoid receptor agonist, such as those examples found in the Schedules of Article II of the Illinois Control Substances Act (720 ILCS 570/201 et seq.), as amended from time to time.
SYNTHETIC PSYCHEDELIC/HALLUCINOGEN:	Any compound that mimics the effects of any federally controlled Schedule I substance, including but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including salts, isomers, esters, ethers and salts of isomers) containing substances which have a psychedelic/hallucinogenic effect on the central nervous system and/or brain, such as those examples found in the Schedules of Article II of the Illinois Control Substances Act (720 ILCS 570/201 et seq.), as amended from time to time.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

SYNTHETIC STIMULANT:	Any compound that mimics the effects of any federally controlled Schedule I substance such as cathinone, methcathinone, MDMA and MDEA, including, but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including salts, isomers, and salts of isomers) containing substances which have a stimulant effect on the central nervous system, such as those examples found in the Schedules of Article II of the Illinois Control Substances Act (720 ILCS 570/201 et seq.), as amended from time to time.
TAVERN:	Any public place kept, used, maintained, advertised and held out to the public as a place where alcoholic liquor is offered for sale to the public for consumption on the premises or for consumption off the premises when sold to the public in its original package. The service of food or meals is incidental to the service of alcoholic liquor.
TOBACCO LICENSE:	A cigarette and tobacco dealer's license.
TOBACCO PRODUCTS:	Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.
VENDING MACHINE:	Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.
WINE OR VINOUS BEVERAGES:	Any alcoholic beverage obtained by the fermentation of the natural contents of fruits, or vegetables, containing sugar, including such beverages when fortified by the addition of alcohol or "spirits", as defined herein. (Ord. 92-144, 8-4-1992; amd. Ord. 92-191, 10-6-1992; Ord. 93-102, 7-6-1993; Ord. 93-246, 12-7-1993; Ord. 02-182, 9-3-2002; Ord. 02-188, 9-3-2002; Ord. 04-076, 5-4-2004; Ord. 07-239, 11-6-2007; Ord. 08-085, 5-6-2008; Ord. 08-182, 10-7-2008; Ord. No. 11-024, § 1, 2-1-2011; Ord. No. 12-001, § 1, 1-17-2012; Ord. No. 12-004, § 1, 1-17-2012; Ord. No. 12-025, § 1, 3-20-2012; Ord. No. 12-031, § 1, 4-3-2012; Ord. No. 12-061, § 1, 6-5-2012; Ord. No. 12-144, § 1, 11-20-2012)

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

#### 3-3-2: LOCAL LIQUOR AND TOBACCO CONTROL COMMISSIONER:

1. Mayor To Serve As: The Mayor is hereby authorized to be the local Liquor and Tobacco Control Commissioner and shall be charged with the administration of the Dramshop Act <sup>[12]</sup>, and of such ordinances and resolutions relating to alcoholic liquor and tobacco products as may be enacted. The Mayor may appoint a person or persons to assist the Commissioner in the exercise of the powers and the performance of the duties provided for such local liquor and tobacco control Commissioner. Each assistant shall serve for a period of four (4) years or until their successors are appointed. Assistants may serve no more than two (2) consecutive four-year terms.
2. Powers, Duties And Functions: The local Liquor and Tobacco Control Commissioner shall have the following powers, functions and duties with respect to local liquor and tobacco licenses:
  - 2.1. To grant and/or suspend for not more than thirty (30) days, or revoke for cause, all local licenses issued to persons or entities for premises within the Commissioner's jurisdiction, and to impose fines as authorized in this Chapter.
  - 2.2. To enter or to authorize any law enforcement officer to enter, at any time, upon the premises licensed hereunder to determine whether any of the provisions of the State law or City ordinance, or any rules or regulations adopted by the Commissioner or by the State Commission, have been or are being violated, and at such time to examine the premises of the licensee in connection therewith. Any person or persons appointed by the local Liquor and Tobacco Control Commissioner pursuant to this Section shall have the power given to the local Liquor and Tobacco Control Commissioner by this Subsection.
  - 2.3. To receive complaints from any citizen within the Commissioner's jurisdiction that any of the provisions of the State law or of this Chapter have been or are being violated, and to act upon such complaint(s) in the manner provided by law.
  - 2.4. To receive local license fees and pay same to the Finance Director.
  - 2.5. To examine, or cause to be examined, under oath, any applicant for a local license or for a renewal thereof, or any licensee upon whom notice of revocation or suspension has been served, or any licensee against whom a citation proceeding has been instituted by the State of Illinois Liquor Control Commission; to examine, or cause to be examined, the books and records of any such applicant or licensee or respondent; and to hear testimony and take proof for his information in the performance of his duties; and for such purposes, to issue subpoenas which shall be effective in any part of this State. For the purpose of obtaining any of the information desired by the local Liquor and Tobacco Control Commissioner under this Section, the Commissioner may authorize his agent to act on his or her behalf.
  - 2.6. To order, upon the issuance of a written order, the licensed premises closed for not more than seven (7) days, giving the licensee an opportunity to be heard during that period, if the local Liquor and Tobacco Control Commissioner has reason to believe that any continued operation of a particular licensed premises will immediately threaten the welfare of the community; except that if such licensee shall also be engaged in the conduct of another business or businesses on the licensed premises, such order shall not be applicable to such other business or businesses.
3. Liquor Commission: The local Liquor and Tobacco Control Commissioner may delegate to the Liquor Commission such functions and duties as set forth herein as the Commissioner determines appropriate, including, but not limited to, the conduct of any hearing required by law. Provided, the Commissioner shall have final authority for all such matters and may adopt or reject, in whole or in part, any recommendation of the Liquor Commission.

(Ord. 92-144, 8-4-1992; Ord. 93-187, 10-5-1993; Ord. 02-181, 9-3-2002; Ord. 08-034, 2-19-2008)



## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

#### **3-3-3: LICENSE REQUIRED:**

It shall be unlawful to sell or offer for sale at retail in the City any alcoholic liquor or tobacco products without having a dealer's license, or in violation of the terms of such license.

Applications for such licenses shall be made to the City Clerk.

(Ord. 09-039, 4-8-2009)

#### **3-3-4: APPLICATION FOR LICENSES:**

##### **1. Liquor Licenses:**

1.1. Applications for such licenses shall be made to the local Liquor and Tobacco Control Commissioner, in writing, signed by the applicant, if an individual, or by a duly authorized agent thereof if a club or corporation, verified by oath or affidavit, and shall contain the statements and information and be in the form provided for in the rules and regulations of the local Liquor and Tobacco Control Commissioner.

All managers and assistant managers for all types of licensed liquor businesses must file applications pursuant to this Section as if they were applicants for individual licenses, must meet all pertinent licensing requirements of this Chapter, and must be approved by the Commissioner. The application, approval and qualification requirements for managers and assistant managers shall be conditions attached to the license of the business employing them, and any violations of those requirements can result in license penalties for the employing business, including suspension, revocation, and/or fines.

The Commissioner may, within his or her discretion, require any applicant for a new City liquor license, any applicant for a renewal of a City liquor license, to be fingerprinted whether said applicant be an individual or a partnership. Should the applicant be a corporation, the Commissioner may, within his or her discretion, require the following to be fingerprinted:

The officers, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than five percent (5%) of the capital stock of said corporation.

All such fingerprinting shall be done by the City Police Department. Said fingerprints shall be submitted to the appropriate State and/or federal agencies for processing as available. The cost of fingerprinting shall be recoverable from the applicant.

The Commissioner shall issue a written acceptance or rejection of an application within sixty (60) days of its receipt by the Commissioner or City Clerk in his or her behalf; or shall notify an applicant of the reasons for further time being necessary to complete the investigation or processing; or shall schedule a hearing on an application for a liquor license as allowed by 235 Illinois Compiled Statutes 5/7-9.

##### **2. Cigarette And Tobacco Dealer's License:**

2.1. Applications for such licenses shall be made to the City Clerk.

2.2. A cigarette and tobacco dealer's license shall be a purely personal privilege, effective for a period not to exceed one year after issuance unless sooner revoked as provided by this Subsection. Such a license:

2.2.1. Shall not constitute property, or be subject to attachment, garnishment or execution;

2.2.2. Shall not be transferable, voluntarily or involuntarily;

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

2.2.3. Shall cease upon the death of the licensee, and shall not descend by the laws of testate or intestate devolution; provided that executors or administrators of the estate of any deceased licensee, and the trustee of any insolvent or bankrupt licensee, when such estate consists in part of the tobacco products under the order of the appropriate court, may exercise the privileges of the deceased or insolvent or bankrupt licensee after the death of such licensee, or such insolvency or bankruptcy, until the expiration of such license, but not longer than six (6) months after the death.

(Ord. 92-144, 8-4-1992; Ord. 93-246, 12-7-1993)

#### **3-3-5: RESTRICTIONS ON LIQUOR LICENSES:**

The fact that an applicant has been convicted of or has been placed on supervision for a drug or alcohol related offense or suspension of a liquor license in any other jurisdiction shall be considered in the review of an application for a liquor license or renewal thereof, and may be the basis for the denial of the license or renewal of any license hereunder. For purposes of this Chapter, "alcohol related offense" includes driving while under the influence of intoxicating liquor, and any offenses involving the possession, transfer or consumption of alcohol. No such license shall be issued to:

1. A person who is not of good character and reputation in the community in which such person resides, or is a habitual user of alcohol, drugs, narcotics, marijuana, or controlled substances.
2. A person who is not a citizen of the United States.
3. A person who has been convicted of a felony under any federal or State law.
4. A person who has been convicted of being the keeper or is keeping a house of ill fame.
5. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality.
6. A person whose license under this Chapter, or any similar regulatory ordinance or statute, has been revoked for cause.
7. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.
8. A copartnership, if any general partnership thereof, or any limited partner thereof, owning more than five percent (5%) of the aggregate limited partner interest in such partnership, would not be eligible to receive a license hereunder.
9. A corporation, if any officer, manager, assistant manager, or director thereof, or any stockholder or stockholders owning in the aggregate more than five percent (5%) of the stock of such corporation, would not be eligible to receive a license hereunder for any reason other than citizenship.
10. A corporation, unless it is incorporated in Illinois, or unless it is a foreign corporation which is qualified under the Business Corporation Act to transact business in Illinois.
11. A person whose place of business is conducted by a manager or assistant manager or agent, unless said manager or assistant manager or agent possesses the same qualifications required by the licensee, and is a resident or resides within fifteen (15) miles of the corporate limits of the City of Naperville.
12. A person who has been convicted of a violation of any federal or State law concerning the manufacture, possession or sale of alcoholic liquor, or who shall have forfeited his bond to appear in court to answer charges for any such violation.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

13. A person who does not own the premises for which a license is sought, or does not have a lease thereon for the full period for which the license is issued.
14. Any elected public official, Naperville officer or employee or member of any Naperville board or commission; and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale or distribution of alcoholic liquor.
15. Any person, firm or corporation not eligible for a State retail liquor dealer's license.
16. Any applicant who fails to obtain a State liquor license.
17. A person who is not a beneficial owner of the business to be operated by the licensee.
18. A person who has been convicted of a gambling offense as prescribed by any of 720 Illinois Compiled Statutes 5/28-1 (a)(3) through (a)(10), or as prescribed by a statute replacing any of the aforesaid statutory provisions; or any person who has been convicted of a gambling offense as prescribed by ordinance of the City.
19. Federal gaming device or wagering stamps:
  - 19.1. A person to whom a federal gaming device stamp or a federal wagering stamp has been issued by the federal government for the current tax period.
  - 19.2. A copartnership to which a federal gaming device stamp or a federal wagering stamp has been issued by the federal government for the current tax period, or if any of the partners have been issued a federal gaming device stamp or federal wagering stamp by the federal government for the current tax period.
  - 19.3. A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than five percent (5%) of the stock of such corporation has been issued a federal gaming device stamp or a federal wagering stamp for the current tax period.
  - 19.4. Any premises for which a federal gaming device stamp or a federal wagering stamp has been issued by the federal government for the current tax period.
20. Any premises from which motor vehicle fuel is sold or dispensed.
21. Any premises from which alcoholic liquor is or may be sold at a drive-through facility where the customer or purchaser can purchase or receive delivery of alcoholic liquor without exiting a motor vehicle or without entering such building or structure where alcoholic liquor is sold.  
(Ord. 92-144, 8-4-1992)

#### **3-3-6: RECORD OF LICENSES:**

The City Clerk shall keep a complete record of all liquor and tobacco licenses issued and shall furnish the Chief of Police with a copy thereof; upon revocation or suspension of any license, the City Clerk shall immediately give written notice thereof to the Chief.

(Ord. 92-144, 8-4-1992)

#### **3-3-7: LIQUOR LICENSE; INSURANCE REQUIREMENTS:**

No liquor license shall be granted to an applicant until such applicant shall furnish evidence satisfactory to the local Liquor and Tobacco Control Commissioner that such applicant is covered by a policy of dramshop insurance issued by a responsible insurance company

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

authorized and licensed to do business in the State of Illinois insuring such applicant against liability which such applicant may incur under the provisions of 235 Illinois Compiled Statutes 5/6-21, and specifically designating the City of Naperville as an additional insured. The evidence of the insurance policy shall indicate that the term of the insurance is of sufficient length to encompass the period of the license sought.

(Ord. 92-144, 8-4-1992)

#### **3-3-8: TERM OF LICENSE; RENEWALS:**

Each license issued hereunder shall terminate on April 30 following the issuance thereof. Any licensee may renew such license at the expiration thereof, provided that it is then qualified to receive a license and the premises for which such renewal license is sought are suitable for such purpose; provided further that the renewal privilege herein provided for shall not be construed as a vested right which shall in any case prevent the City Council from decreasing or limiting the number of classes of licenses to be issued within the City.

(Ord. 92-144, 8-4-1992)

#### **3-3-9: TRANSFER OF LICENSE:**

A liquor or tobacco license shall be a purely personal privilege, effective for a period not to exceed one year after issuance unless sooner revoked as in this Chapter provided, and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such license shall cease upon the death of the licensee, and shall not descend by the laws of testate or intestate devolution; provided that executors or administrators of the estate of any deceased licensee, and the trustee of any insolvent or bankrupt licensee, when such estate consists in part of tobacco products or alcoholic liquor, may continue the business of the sale or manufacture of alcoholic liquor or tobacco products under the order of the appropriate court, and may exercise the privileges of the deceased or insolvent or bankrupt licensee after the death of such decedent, or such insolvency or bankruptcy, until the expiration of such license, but not longer than six (6) months after the death, bankruptcy or insolvency of such licensee.

(Ord. 92-144, 8-4-1992)

#### **3-3-10: CIGARETTE AND TOBACCO DEALER'S LICENSE FEE:**

The annual fee for a cigarette and tobacco dealer's license issued after April 30, 2012 shall be one hundred fifty dollars (\$150.00) per establishment where cigarettes and tobacco are sold in any form. The annual fee for a cigarette and tobacco dealer's license issued after April 30, 2013 shall be two hundred dollars (\$200.00) per establishment where cigarettes or tobacco are sold in any form.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

(Ord. 92-144, 8-4-1992; Ord. No. 12-031, § 2, 4-3-2012)

#### **3-3-11: LIQUOR LICENSES, PERMITS, CLASSIFICATION AND FEES:**

There shall be the following classes of liquor licenses and permits with an annual license and permit fee as indicated: (Ord. No. 12-004, § 2, 1-17-2012)

1. Class A—Restaurant:

- 1.1. A restaurant license authorizes the retail sale, on the premises specified, of alcoholic liquor by the drink or vinous beverages by the bottle or carafe, or beer or margaritas by the pitcher of a capacity not to exceed sixty (60) ounces.
- 1.2. Service of alcoholic liquor shall be only during the time that full meals are being served and a full menu is in effect.
- 1.3. The license shall only be available for premises defined as a "restaurant" herein.
- 1.4. All such liquor service shall be from a service bar only; said bar not to be available for customer use.
- 1.5. Restaurant licenses shall be issued only to restaurants that have dining facilities as stated.
- 1.6. The annual fee for a class A license shall be one thousand six hundred fifty dollars (\$1,650.00).

2. Class B—Restaurant And Tavern:

- 2.1. A restaurant and tavern license authorizes the retail sale, on the premises specified of alcoholic liquor until eleven o'clock (11:00) p.m. Sunday through Saturday.
- 2.2. The primary business conducted on the premises shall be the service of meals. A full menu, including entrees and side dishes, and a fully staffed and operational kitchen shall be required until nine o'clock (9:00) p.m. Sunday through Thursday, and ten o'clock (10:00) p.m. Friday and Saturday.
  - 2.2.1. Kitchen Hours:
    - 2.2.1.1. Notwithstanding any other provision of the Chapter, Class B—Restaurant and Tavern licenses are not required to open and staff their kitchens on Thanksgiving Day and Christmas Day.
- 2.3. No Class B liquor license holder shall sell or permit to be sold, offer for sale, give away or permit to be consumed any alcoholic liquor after eleven o'clock (11:00) p.m. on any day.
- 2.4. A restaurant and tavern license authorizes the retail sale, on the premises specified, of alcoholic liquor by the drink for consumption on the premises, and beer and vinous beverages by the bottle or carafe, or beer or margaritas by the pitcher of a capacity not to exceed sixty (60) ounces.
- 2.5. All such liquor service shall be by the drink only, excepting vinous beverages by the bottle or carafe, or beer or margaritas by the pitcher of a capacity not to exceed sixty (60) ounces.
- 2.6. The annual fee for a Class B license shall be two thousand one hundred dollars (\$2,100.00).
- 2.7. Late Night Permit:
  - 2.7.1. The late night permit is issued as a condition of a Class B—Restaurant and Tavern license and authorizes the holder of a Class B—Restaurant and Tavern license to serve alcohol liquor from eleven o'clock (11:00) p.m. to one o'clock (1:00) a.m. Monday through

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

Friday and two o'clock (2:00) a.m. Saturday and Sunday without meal and kitchen requirements.

2.7.2. The City Council may modify the number of Late Night Permits upon either a petition to the City Council by a Class B—Restaurant and Tavern license applicant or the revocation, surrender, expiration without renewal, or abandonment of a Class B—Restaurant and Tavern license or late night permit.

2.7.3. Upon petition to the City Council by a Class B—Restaurant and Tavern liquor license applicant to modify the number of late night permits, the City Council may, but is not limited to, considering the following criteria: 1) the surrounding land uses, 2) the business concept, 3) the proximity to other liquor establishments, 4) the applicant's prior liquor business experience, 5) the public's health, safety, and welfare, 6) public safety resources, 7) market conditions, and 8) any other criteria that is relevant to the issuance, establishment, and administration of a retail liquor license.

2.7.4. The nonrenewal, suspension or revocation of a late night permit and the licensee's right to a hearing is subject to the provisions of this Chapter.

2.7.5. The annual fee for the Late Night Permit shall be two hundred dollars (\$200.00). (Ord. No. 12-004, § 2, 1-17-2012; Ord. No. 12-025, § 2, 3-20-2012; Ord. No. 12-055, § 1, 6-5-2012)

#### 3. Class C—Tavern:

3.1. Authorizes the retail sale of alcoholic liquor for consumption on the premises sold.

(Ord. 08-182, 10-7-2008)

3.2. All such liquor service, excepting vinous beverages by the bottle or carafe, or beer or margaritas by the pitcher of a capacity not to exceed sixty (60) ounces, shall be by the drink only and may be served from a customer bar.

3.3. The annual fee for a class C license shall be two thousand one hundred dollars (\$2,100.00).

(Ord. 03-181, 8-19-2003)

3.4. No class C license shall be issued to a premises not within a shopping center complex of not less than sixty thousand (60,000) square feet of gross building floor area. No more than one class C license shall be permitted in any such shopping center.

3.5. The square footage requirements for class C licenses are not applicable to renewal of existing class C licenses, and shall not preclude the issuance of a liquor license to the purchaser of an established premises for which a liquor license has been previously issued.

(Ord. 07-239, 11-6-2007)

3.6. Authorizes the licensee to sell to the general public, alcoholic liquor in the original sealed package only, for consumption off the premises.

(Ord. 08-182, 10-7-2008)

#### 4. Class D—Package Store:

4.1. Authorizes the retail sale, on the premises specified, of alcoholic liquor in its original package, not for consumption on the premises.

4.1.1. No class D license shall be issued to a premises which is not located within a shopping center of at least sixty thousand (60,000) square feet of gross building floor area unless such premises having been previously grandfathered from this square footage requirement.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

4.1.1.1. In shopping centers of at least one hundred thousand (100,000) square feet of gross building floor area, an additional class D license may be permitted if such license is located in a premises which primary business is other than the sale of alcoholic liquor. For purposes of this Subsection, a primary business other than the sale of alcoholic liquor, if not more than twenty-five percent (25%) of the annual gross revenues from the premises is derived from the sale of alcoholic liquor.

(Ord. 07-239, 11-6-2007)

4.2. If the sale of alcoholic liquor is conducted on premises which are utilized primarily for other retail sales activity, the display of liquor shall be confined to a liquor display area as approved by the Liquor Commissioner. The liquor display area shall generally be a designated portion of the premises which includes all liquor. In particular, but without limitation, there shall be no aisle displays, or stocking of liquor in any public area of the establishment except in the approved liquor display area. Any changes to the location or size of the liquor display area shall be approved by the Liquor Commissioner. The licensee shall cause a sign advising that the area is closed to be conspicuously posted within the liquor display area during those hours that liquor sales are prohibited.

(Ord. 03-181, 8-19-2003)

4.3. Liquor tasting may be permitted by a class D licensee as a promotional procedure once a month for a period of not to exceed three (3) consecutive days. This privilege is subject to an annual fee of one hundred dollars (\$100.00) in addition to the prescribed fee, except that no licensee shall give or offer to give away alcoholic liquors as a gift, gratuity, or tie in with the sale of nonalcoholic products or to induce the purchase of or promote the sale of nonalcoholic products. Liquor tasting under this Subsection shall be limited to beer, wines and alcoholic liquors only and shall be limited to the approved liquor display area.

4.4. Liquor tasting may be permitted by a class D licensee as a promotional procedure each week for a period not to exceed two (2) consecutive days. This privilege is subject to an annual fee of two hundred dollars (\$200.00) in addition to the prescribed fee, except that no licensee shall give or offer to give away alcoholic liquors as a gift, gratuity or tie in with the sale of nonalcoholic products or to induce the purchase or promote the sale of nonalcoholic products. Liquor tasting under this Subsection shall be limited to beer, wines and alcoholic liquors only and shall be limited to the approved liquor display area. A class D licensee may secure either the privilege allowed by this Subsection 3-3-11.4.4 or Subsection 3-3-11.4.3 of this Section, but not both.

(Ord. 07-239, 11-6-2007)

4.5. The annual fee for a class D license shall be two thousand dollars (\$2,000.00).

(Ord. 03-181, 8-19-2003)

4.6. The square footage requirements for class D licenses are not applicable to renewal of existing class D licenses, and shall not preclude the issuance of a liquor license to the purchaser of an established premises for which a liquor license has been previously issued.

(Ord. 07-239, 11-6-2007)

#### 5. Class E — Temporary License, Daily Fee:

5.1. Authorizes the retail sale of wine and/or beer only, on the premises specified, for consumption on or adjacent to said premises at a picnic, carnival, or similar function. Such temporary licenses are to be granted to local organizations or groups promoting a common object rather than the sale of wine and/or beer.

5.2. Such license shall be authorized on a day to day basis, but for not more than seven (7) consecutive days.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

5.3. The fee for such license shall be fifty dollars (\$50.00) per day.

(Ord. 03-181, 8-19-2003)

6. Class G — Beer And Wine Package Sale:

6.1. Authorizes the retail sale of beer and wine only in sealed packages, but not for consumption on the premises where sold.

6.1.1. No class G license shall be issued to a premises which is not located in either a shopping center of at least sixty thousand (60,000) square feet of gross building floor area or to a premises located in a shopping center zoned B-1 (neighborhood convenience shopping center district), and which shopping center has at least forty-five thousand (45,000) square feet of gross building floor area.

(Ord. 07-239, 11-6-2007)

6.2. If the sale of alcoholic liquor is conducted on premises which are utilized primarily for other retail sales activity, the display of liquor shall be confined to a liquor display area as approved by the Liquor Commissioner. The liquor display area shall generally be a designated portion of the premises which includes all liquor. In particular, but without limitation, there shall be no aisle displays, or stocking of liquor in any public area of the establishment except in the approved liquor display area. Any changes to the location or size of the liquor display area shall be approved by the Liquor Commissioner. The licensee shall cause a sign advising that the area is closed to be conspicuously posted within the liquor display area during those hours that liquor sales are prohibited.

6.3. Beer and wine tasting may be permitted by a class G licensee as a monthly promotion, for a period not to exceed three (3) consecutive days each month. This privilege is subject to an annual fee of one hundred dollars (\$100.00) in addition to the prescribed fee, except that no licensee shall give or offer to give away alcoholic liquors as a gift, gratuity or tie in with the sale of nonalcoholic products or to induce the purchase of or promote the sale of nonalcoholic products. Beer and wine tasting under this Subsection shall be limited to beer and wines only and shall be limited to the approved liquor display area.

6.4. Beer and wine tasting may be permitted by a class G licensee as a promotion each week for a period not to exceed two (2) consecutive days. This privilege is subject to an annual fee of two hundred dollars (\$200.00) in addition to the prescribed fee, except that no licensee shall give or offer to give away alcoholic liquors as a gift, gratuity or tie in with the sale of nonalcoholic products or to induce the purchase or promote the sale of nonalcoholic products. Beer and wine tasting under this Subsection shall be limited to beer and wines only and shall be limited to the approved liquor display area. A class G licensee may secure either the privilege allowed by Subsection 3-3-11.6.3 of this Section or this Subsection 3-3-11.6.4, but not both.

6.5. The annual fee for a class G license shall be one thousand seven hundred dollars (\$1,700.00).

(Ord. 03-181, 8-19-2003; amd. Ord. 07-239, 11-6-2007)

6.6. The square footage requirements for class G licenses are not applicable to renewal of existing class G licenses, and shall not preclude the issuance of a liquor license to the purchaser of an established premises for which a liquor license has been previously issued.

(Ord. 07-239, 11-6-2007)

7. Class H — Clubs:

7.1. Authorizes the retail sale of alcoholic liquor only on the premises where sold to be issued to a regularly organized "club", as heretofore defined, such sales to be made only to members of the club or their guests.



## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 7.2. The club shall file with the local Liquor and Tobacco Control Commissioner at the time of its application for a license two (2) copies of a list of names and residences of its members, and similarly shall file within ten (10) days of the election of any additional member his name and address; and, provided further that the club affairs and management shall be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting and that no member or any officer, agent, or employee of the club shall be paid, or directly or indirectly receive, in the form of salary or other compensation, any profit from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members beyond the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other governing body out of the general revenue of the club.
- 7.3. The annual fee for a club license is three hundred dollars (\$300.00).
8. Class I — Hotel Or Motel:
  - 8.1. A hotel or motel license authorizes the retail sale on the premises specified of alcoholic liquor by the drink for consumption on the premises, and beer, vinous beverages by the bottle, carafe, or beer by the pitcher of a capacity not to exceed sixty (60) ounces, or as provided in Section 3-3-11.13 of this Section.
  - 8.2. Service of alcoholic liquor shall be only during the time that full meals are being served and a full menu is in effect.
  - 8.3. The license shall only be available for premises defined as a "hotel or motel" herein.
  - 8.4. All such liquor service shall be from a service bar only, said bar not to be available for customer use.
  - 8.5. The annual fee for a class I license shall be two thousand four hundred dollars (\$2,400.00).
9. Class J — Hotel And Tavern Or Motel And Tavern:
  - 9.1. A hotel and tavern or motel and tavern license authorizes the retail sale on the premises specified, of alcoholic liquor by the drink for consumption on the premises, and beer and vinous beverages by the bottle, carafe, or beer by the pitcher of a capacity not to exceed sixty (60) ounces.
  - 9.2. The license shall only be available for premises defined as a "hotel and tavern or motel and tavern" herein.
  - 9.3. All such liquor service, excepting beer and vinous beverages by the bottle, carafe, or beer by the pitcher of a capacity not to exceed sixty (60) ounces shall be by the drink only, and may be served from a customer bar or as provided in Subsection 3-3-11.1.1 of this Section.
  - 9.4. The annual fee for a class J license shall be three thousand one hundred dollars (\$3,100.00).
10. Class K — Catering License:
  - 10.1. A catering license authorizes the sale of alcoholic liquor in connection with the operation of a catering business within the City, which sale shall be made at the registered office of the licensee, which shall be the licensed premises, and nowhere else.
  - 10.2. Alcoholic liquor shall only be sold and served by the licensee in connection with the catering of foods.
  - 10.3. In addition to the other requirements of this Chapter, a class K license shall only be issued to persons who can demonstrate that they are operating a bona fide catering business with headquarters within the city.
  - 10.4. The annual fee for a class K license shall be one thousand dollars (\$1,000.00).
11. Class L — Special Event License:

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 11.1. Authorizes the retail sale of wine and/or beer only, on the specified premises. Such special event licenses are to be granted to local not for profit community organizations chartered as such, or governmental entities, which are dedicated to the realization of local goals which are a direct benefit to all the citizens of the City. Such sales are limited to the public in general at a picnic, carnival or similar function.
- 11.2. Such license authorizes the retail sale and/or consumption of wine and/or beer only, on municipally owned property, such as streets, roads or parks. The boundaries of the licensed premises and the duration of the license shall be established by the local Liquor and Tobacco Control Commissioner. The licensee shall maintain the premises in a neat, orderly and safe condition, shall provide such traffic control and sanitation facilities as may be required by the local Liquor and Tobacco Control Commissioner to protect the public health, safety, welfare and morals of the residents of the City, and shall restore the premises after expiration of the license to its prior condition, including the removal of trash, rubbish and garbage in accordance with this Code. No alcoholic liquor shall be brought onto the premises or consumed on the premises other than that provided by the licensee under the terms and conditions of this Chapter and its license.
- 11.3. The retail sale and consumption of wine and beer authorized by a license issued pursuant to this Subsection 3-3-11.11 shall be limited to the premises specified in the license, which premises shall be entirely enclosed in a tent, in a fenced area, or entirely enclosed by a double fence with at least four feet (4') separating each fence row, demarcating the licensed premises.
- 11.4. Such licenses hereunder shall be limited to two (2) such licenses for any applicant in any calendar year.  
(Ord. 03-181, 8-19-2003; amd. Ord. 07-239, 11-6-2007; Ord. No. 12-150, § 1, 12-18-2012)
- 11.5. There shall be no additional charge for an entertainment permit used in conjunction with the license issued hereunder.  
(Ord. 03-181, 8-19-2003; amd. Ord. 07-239, 11-6-2007; Ord. 08-085, 5-6-2008)
- 11.6. All persons who will sell, serve, or dispense any alcoholic beverages shall annually attend a course of instruction given by the Naperville Police Department and the Naperville Liquor and Tobacco Control Commissioner prior to the event for which such license is issued.
- 11.7. The fee for such license shall be fifty dollars (\$50.00) per day, plus payment to the City for the actual cost incurred by the City in providing additional police personnel necessitated by improper conduct or control by the licensee on the specified premises. Each licensee who is to be held responsible for additional charges shall receive an itemized invoice therefor, shall be given an opportunity to review the charges with the Liquor and Tobacco Control Commissioner, and shall thereafter promptly pay any such additional charge determined by the Commissioner to be due the City.  
(Ord. 03-181, 8-19-2003; amd. Ord. 07-239, 11-6-2007)
12. Class M — Recreational License:
- 12.1. A recreational license authorizes the retail sale, on the premises specified, for consumption on said premises, of alcoholic liquor by the drink or vinous beverages by the bottle or carafe, or beer if by the pitcher of a capacity not to exceed sixty (60) ounces or by the bottle or glass of a capacity not to exceed sixteen (16) ounces.
- 12.2. Service of alcoholic liquor shall be only during the time that the athletic or sports portions of the premises are open and available for use.
- 12.3. Food may be served for the convenience of the patrons, so long as such food service complies with all applicable health regulations and licensing requirements.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 12.4. A certified record of annual revenue shall be included with the liquor license renewal application and shall be considered by the local Liquor and Tobacco Control Commissioner as a basis of nonrenewal of the liquor license.
- 12.5. A recreational license issued for a golf course may also authorize the retail sale of alcoholic liquor for consumption outside the physical structure of the premises but adjacent to and within the property lines of the golf course, excluding public parking lots, sidewalks, and roadways, subject to the following provisions:
- 12.5.1. All alcoholic liquor shall be purchased from the recreational premises. No outside alcoholic liquor shall be permitted on the premises, and
- 12.5.2. A policy of dramshop insurance shall be required for the outside premises and shall comply with all the insurance requirements as provided for in this Chapter and 235 Illinois Compiled Statutes 5/6-21, and
- 12.5.3. A certified BASSET trained employee shall be responsible for the service of alcohol at the outside recreational activity.
- 12.6. The annual fee for a class M license shall be two thousand dollars (\$2,000.00).  
(Ord. 08-085, 5-6-2008)
13. Special Promotional Permits:
- 13.1. Promotional activities by local merchants or under sponsorship of a local not for profit organization for the sale of merchandise other than undergarments, sleepwear, lingerie and swimming attire, displayed by live models, shall be permitted within class A, B, I, J, K, L or M licensed premises.
- 13.2. The fee for such permit shall be twenty-five dollars (\$25.00) per event.
14. Bottle Permit:
- 14.1. Sale at retail of distilled spirits, vinous beverages and beer by the bottle to registered guests within their rooms for consumption therein shall be permitted under class I and J licenses only.
15. Class N — Wine/Champagne Basket Sales License:
- 15.1. Authorizes the retail sale of bottled wine or champagne to be sold exclusively as part of an arrangement in a gift basket by an establishment in which the retail sale of bottled wine and champagne is the primary and principal business thereof.
- 15.2. In addition to other requirements of this Chapter, a class N license shall only be issued to persons who can demonstrate that they are operating a bona fide wine/champagne gift basket business.
- 15.3. Wine and champagne shall be sold in sealed packages only and consumption on the premises where sold is not permitted.
- 15.4. The annual fee for the class N license shall be one thousand dollars (\$1,000.00).
- 15.5. For purposes of this license classification, a "basket" shall be defined as a decorative gift container which may be constructed of wood, metal, plastic, woven rope, decorative paper or plastic bag or such similar material the purpose of which is to hold the gift bottle arrangement.
- 15.6. Wine and champagne tasting may be permitted by a class N licensee as a monthly promotion, for a period not to exceed three (3) consecutive days each month. This privilege is subject to an annual fee of one hundred dollars (\$100.00) in addition to the prescribed fee, except that no licensee shall give or offer to give away alcoholic liquors as a gift, gratuity, or tie in with the sale of nonalcoholic products or to induce the purchase of or promote the sale of

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

nonalcoholic products. (Wine and champagne tasting under this Subsection 3-3-11.15.6 shall be limited to wines and champagne only.)

15.7. Wine and champagne tasting may be permitted by a class N licensee as a promotion each week for a period not to exceed two (2) consecutive days. This privilege is subject to an annual fee of two hundred dollars (\$200.00) in addition to the prescribed fee, except that no licensee shall give or offer to give away alcoholic liquors as a gift, gratuity or tie in with the sale of nonalcoholic products or to induce the purchase or promote the sale of nonalcoholic products. (Wine and champagne tasting under this Subsection 3-3-11.15.7 shall be limited to wines and champagne only.) A class N licensee may secure either the privilege allowed by Subsection 3-3-11.15.6 of this Section or this Subsection 3-3-11.15.7, but not both.

#### 16. Class O — Nightclubs:

16.1. A nightclub license authorizes the retail sale on the premises specified of alcoholic liquor by the drink for consumption on the premises, and beer, vinous beverages by the bottle, carafe or beer by the pitcher of a capacity not to exceed sixty (60) ounces.

16.2. The license shall only be available for premises defined as a "nightclub" herein.

(Ord. 03-181, 8-19-2003; amd. Ord. 07-239, 11-6-2007)

16.3. All such liquor service, excepting beer and vinous beverages by the bottle, carafe or beer or margaritas by the pitcher of a capacity not to exceed sixty (60) ounces shall be by the drink only, and shall be served from a service bar by waitresses and waiters.

(Ord. 07-081, 5-1-2007; amd. Ord. 07-239, 11-6-2007)

16.4. The annual fee for a class O license shall be two thousand one hundred dollars (\$2,100.00), which shall be in addition to the license fees required for an entertainment permit under Section 3-3-15 of this Chapter.

(Ord. 07-081, 5-1-2007; amd. Ord. 07-239, 11-6-2007; Ord. 08-085, 5-6-2008)

16.5. No class O license shall be issued to a premises not within a shopping center complex of not less than sixty thousand (60,000) square feet of gross building floor area. No more than one class O license shall be permitted in any such shopping center, except that there may be permitted an additional class O license under the following circumstances:

16.5.1. In shopping centers of at least one hundred thousand (100,000) square feet of gross building floor area, an additional class O license may be permitted if such license is located in a premises which primary business is other than the sale of alcoholic liquor. For purposes of this Subsection, a primary business, other than the sale of alcoholic liquor, if not more than twenty-five percent (25%) of the annual gross revenue from the premises is derived from the sale of alcoholic liquor.

16.6. The square footage requirements for class O licenses are not applicable to renewal of existing class O licenses, and shall not preclude the issuance of a liquor license to the purchaser of an established premises for which a liquor license has been previously issued.

(Ord. 07-239, 11-6-2007)

#### 17. Class P — Brewery/Retailer:

17.1. Authorizes the retail sale of craft beer only as defined herein brewed on the premises and in its original package for consumption off the premises, maintain facilities on the premises for the manufacture of craft beer, and to store the manufactured craft beer on the licensed premises.

17.2. Tastings are limited to the craft beer manufactured on the premises under this classification, and shall be permitted during the authorized hours of business under the following conditions:

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 17.2.1. That portion of the licensed premises dedicated to offering tastings shall be segregated from the remainder of the premises;
- 17.2.2. The location of tastings shall be limited to the retail portion of the licensed premises;
- 17.2.3. Tastings shall be from a bar only; stools for customer seating may be made available at the bar;
- 17.2.4. Except for stools at the bar, customer seating shall not be provided or permitted;
- 17.2.5. Not more than three (3) craft beer tastings shall be served to any customer in one (1) day and each tasting shall be limited to either: by the glass, having a capacity of not more than sixteen (16) ounces; by the bottle, having a capacity of not more than twelve (12) ounces; or by the flight, having not more than four (4) glasses with each glass not having more than four (4) ounces;
- 17.2.6. A price may be set for such tasting;
- 17.2.7. All applicable taxes including sales tax shall be collected and paid on all revenue realized from tastings; and
- 17.2.8. Compliance with all terms and conditions set forth in the definition of this class.
- 17.3. A premises granted or issued a class P license, or any renewal thereof, shall be subject to the following conditions:
  - 17.3.1. The licensed premises shall not exceed manufacture of four hundred sixty five thousand (465,000) gallons per year;
  - 17.3.2. Reserved.
  - 17.3.3. Licensee shall maintain accurate records as to the total gallonage of beer manufactured on the premises and the total gallonage of beer manufactured on the premises and sold for consumption off-premises. Licensee shall produce said records to the City of Naperville upon request;
  - 17.3.4. The portion of the licensed premises dedicated to the manufacturing of craft beer shall be segregated from the remainder of the premises and shall not be generally accessible to the public;
  - 17.3.5. Not more than twenty-five percent (25%) of the total gross square footage area of the physical premises shall be designated to the retail sale of craft beer, under no circumstances shall the total gross square footage of the retail space exceed one thousand two hundred fifty (1,250) square feet; and
  - 17.3.6. Compliance with and adherence to any and all applicable federal, state, and local laws and regulations, including, but not limited to procurement of requisite Federal Brewer's Notice; Illinois Manufacturer's (Brewer's) Liquor License; State of Illinois Craft Brewer's License; and any and all other requisite licenses and permits concerning manufacture, packaging, storing, sale, and distribution of alcoholic beverages.
- 17.4. The annual fee for a class P license shall be two thousand dollars (\$2,000.00). (Ord. No. 11-134, § 1, 9-20-2011)
- 18. Class Q — Complimentary Beer And Wine:
  - 18.1. Permits an all suite type hotel to serve complimentary beer and wine to registered guests between the hours of four o'clock (4:00) p.m. and seven o'clock (7:00) p.m. Hors d'oeuvres or other food must be served continually during the complimentary hours. Service of such complimentary beverages shall be provided only in an area separate and apart from the lobby and other common use areas of the hotel.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 18.2. If an all suite type hotel currently has a class I liquor license then they need not also obtain a class Q liquor license.
- 18.3. The annual fee for a class Q liquor license shall be two hundred fifty dollars (\$250.00).
19. Class R — Legitimate Theater House:
- 19.1. Permits the sale at retail to patrons of the premises of beer and vinous beverages not more than one hour before the start of the theatrical performance and during intermission for a period of not more than one-half (½) hour.
- 19.2. Such sale and delivery shall be confined to the lobby or foyer of the licensed premises.
- 19.3. Such area shall be without seating and shall be fully illuminated.
- 19.4. Beer or vinous beverage may be removed from such segregated area by a patron to the theater portion of the premises only.
- 19.5. Such beer and vinous beverages shall be served from a customer bar only. Beer shall be served by the glass or bottle only, having a capacity of not more than twelve (12) ounces. Vinous beverages shall be served by the glass only, and such vessel shall have a capacity of not more than five (5) ounces.
- 19.6. The display of the uncovered female breast or the genitalia of either sex or the display or deportment of the human body in a manner that is lewd, lascivious, or appeals to prurient interests is strictly prohibited as are any productions exploiting minors in a sexual manner.
- 19.7. The annual fee for a class R license shall be five hundred dollars (\$500.00).  
(Ord. 03-181, 8-19-2003; amd. Ord. 07-239, 11-6-2007; Ord. No. 12-060, § 1, 6-5-2012)
20. Class S—Specialty Wine Shop:
- 20.1. Authorizes the retail sale of wine and craft beer only for consumption off premises. (Ord. No. 11-024, § 1, 2-1-2011)
- 20.2. A premises granted or issued a class S license, or any renewal thereof, shall be subject to the following conditions:
- 20.2.1. The licensed premises shall not exceed a gross area of one thousand five hundred (1,500) square feet total.
- 20.2.2. Not less than twenty percent (20%) of the total gross area of the licensed premises shall be designated for the sale of specialty foods.
- 20.2.3. Winetasting of only the wines permitted to be sold under this classification for consumption off premises, shall be permitted during authorized hours of business under the following conditions:
- 20.2.3.1. Not more than seven (7) ounces of wine may be offered for sale, sold or served to any one person during any one daily license period and such seven (7) ounces shall be comprised of not less than seven (7) different wines, and no glass shall contain more than one ounce of wine.
- 20.2.3.2. A price may be set for such tasting.
- 20.2.3.3. Sales tax shall be collected and paid on all revenue realized from winetasting.
- 20.2.3.4. The terms and conditions set forth in the definition of this class.
- 20.2.4. Customer seating shall not be provided or permitted.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

20.3. The annual fee for a class S license shall be one thousand two hundred dollars (\$1,200.00).

(Ord. 04-076, 5-4-2004; amd. Ord. 07-239, 11-6-2007)

20.4. Reserved. (Ord. No. 11-024, § 2, 2-1-2011; Ord. No. 12-001, § 2, 1-17-2012)

#### 21. Class T—Heritage Society Cultural License:

21.1. Authorizes the retail sale of beer and wine only to be consumed on the Pre-Emption House premises.

21.2. Service of beer or wine shall be limited to the hours of food service operation at the Pre-Emption House; however, in no event shall alcohol service begin before ten o'clock (10:00) a.m. Monday through Saturday, and twelve o'clock (12:00) noon on Sundays.

21.3. Food service at the Pre-Emption House shall comply with all applicable health and licensing requirements.

21.4. The cultural, educational and/or recreational enhancement provided by the Heritage Society shall be the primary function of this classification and the sale of beer or wine shall not exceed ten percent (10%) of the revenue of the Heritage Society.

21.5. A dramshop insurance policy shall be required and must comply with all the insurance requirements, as provided for in this Chapter, the rules and regulations of the local Liquor Control Commissioner and 235 Illinois Compiled Statutes 5/6-21.

21.6. A certified BASSET trained employee shall be responsible for the service of beer and wine at the Pre-Emption House.

21.7. The annual fee for the class T license shall be one thousand dollars (\$1,000.00).

(Ord. 09-039, 4-8-2009)

#### 22. Outdoor Seating Permit:

22.1. Notwithstanding any other provision of this Code, it shall be unlawful for any retail liquor licensee to serve alcoholic liquor at an outdoor seating area without first obtaining a permit, as provided herein.

22.2. An "outside seating area" means a privately owned outdoor location adjacent to premises licensed for consumption on the premises, excluding any private parking area, where alcoholic liquor may be sold and consumed subject to the provisions governing outdoor seating permits herein.

22.3. Such outdoor seating area may be permitted within a class A, B, C, J, M and U licensed premises subject to the following conditions:

(Ord. No. 12-144, § 2, 11-20-2012)

22.3.1. The outdoor seating area shall be clearly designated with a permanent or semipermanent fence and/or barrier consistent with the existing zoning and building ordinances of this Code.

22.3.2. The location of any outdoor seating area shall comply with all setback requirements in the applicable zoning district, shall not obstruct pedestrian or vehicular traffic and shall comply with all existing ordinances of this Code.

22.3.3. The hours of operation of any outdoor seating area shall be consistent with the normal operating hours of the licensed premises.

22.3.4. A certified BASSET trained employee shall be responsible for the service of alcohol at the outdoor seating area.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 22.4. A permit application is required which shall include a detailed site plan showing all existing buildings, structures and objects on the licensed property, and the proposed location of each item to be placed within the outdoor seating area including, but not limited to, permanent or semipermanent fences and/or barriers, partitions, chairs, tables, lighting and serving stations shall be provided and approved by the City of Naperville. The outdoor seating area shall be maintained in compliance with the approved site plan.
- 22.5. An inspection of the outdoor seating area shall be performed by the City of Naperville prior to the issuance of an outdoor seating permit.
- 22.6. The outdoor seating area shall be in compliance with all requirements of this Code and all other applicable rules and regulations of any governing body regarding the outdoor seating area.
- 22.7. The issued permit shall be posted in a conspicuous place inside the licensed premises.
- 22.8. All such sales of alcoholic liquor shall in all respects be in conformance with the class of license held.
- 22.9. The local Liquor Control Commissioner shall issue the permit.
- 22.10. The annual fee for an outdoor seating permit shall be three hundred dollars (\$300.00).  
(Ord. 06-062, 3-22-2006; amd. Ord. 07-239, 11-6-2007; Ord. No. 12-059, § 1, 6-5-2012)
23. Class U—Specialty Market License:
- 23.1. The primary business conducted on the premises shall be the sale of perishable foods including fresh meat, fish, dairy products, produce, and bakery products.
- 23.2. Authorizes the retail sale, on the premises specified, of alcoholic liquor in its original package, not for consumption on the premises.
- 23.2.1. The retail sale of alcoholic liquor, not for consumption on the premises shall be in a designated area of the licensed premises as approved by the Liquor Commissioner.
- 23.2.2. The display of liquor shall be confined to a liquor display area as approved by the Liquor Commissioner. The liquor display area shall generally be a designated portion of the premises which includes all liquor. In particular, but without limitation, there shall be no aisle displays, or stocking of liquor in any public area of the establishment without the prior approval of the Liquor Commissioner.
- 23.3. Authorizes the retail sale of alcoholic liquor for consumption on the premises in the designated restaurant and tavern portion(s) of the specialty market premises.
- 23.3.1. The area of the licensed premises authorizing the retail sale of alcoholic liquor for on premises consumption shall meet the definition of restaurant and tavern as provided for in this Chapter.
- 23.4. Customers shall not remove open alcoholic beverages from the designated restaurant and tavern area of the premises.
- 23.5. A full menu, including entrees and side dishes, and a fully staffed and operational kitchen shall be required until nine o'clock (9:00) p.m. Sunday through Thursday, and ten o'clock (10:00) p.m. Friday and Saturday.
- 23.6. No class U liquor license holder shall sell or permit to be sold, offer for sale, give away or permit to be consumed any alcoholic liquor after eleven o'clock (11:00) p.m. on any day.
- 23.7. All tastings of alcoholic liquor upon any portion of the licensed premises shall be restricted to:



## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

23.7.1. A total of three (3) tastings served to a customer in any one (1) day and which shall be limited to:

23.7.1.1. No more than one-fourth ( $\frac{1}{4}$ ) ounce of distilled spirits in each tasting, and

23.7.1.2. No more than one (1) ounce of wine in each tasting, and

23.7.1.3. No more than two (2) ounces of beer in each tasting.

23.8. No class U liquor license holder shall be eligible for a late night permit.

23.9. The annual fee for a class U license shall be four thousand one hundred dollars (\$4,100.00).

(Ord. No. 12-144, § 2, 11-20-2012)

#### **3-3-12: INITIAL LIQUOR LICENSE APPLICATIONS, FEES:**

The first and initial license fee for new liquor licenses issued between May 1 and October 31 of any year shall be in an amount equal to the annual fee plus a one thousand dollars (\$1,000.00) nonrefundable fee to defray costs of investigation of applicant as provided for and pursuant to the provisions of this Chapter, payable in one installment. The first and initial liquor license fee for new liquor licenses issued between November 1 and April 30 for any year shall be in an amount equal to one-half ( $\frac{1}{2}$ ) the annual fee plus a one thousand dollar (\$1,000.00) nonrefundable fee to defray costs of investigation of applicant as provided for and pursuant to the provisions of this Chapter, payable in one installment. The following shall not be subject to a first and initial liquor license fee:

1. One who at the time of the adoption of this Chapter was a liquor licensee in the City.
2. One who is a father, mother, brother, sister, husband, wife, son or daughter of a liquor licensee or a deceased licensee, provided that said license of the licensee has first been canceled and so canceled not more than fifteen (15) days prior to the filing of a new application.

Any sale, transfer, or assignment of more than fifty percent (50%) of the shares of a corporation shall terminate said liquor license for the purpose of payment of a fee for a first and initial liquor license.

Any bankruptcy, insolvency of a liquor licensee, any sale, transfer or assignment of any copartner or copartnership or copartnership interest in a license held by a copartnership shall terminate said license for the purpose of payment of a fee for a first and initial liquor license.

(Ord. 92-144, 8-4-1992)

#### **3-3-13: NUMBER OF LIQUOR LICENSES AND PERMITS ISSUED:**

All liquor licenses and permits issued hereunder shall be designated by the classification letter herein provided. There shall be such number of liquor licenses and permits as may be from time to time provided. There may be in force at any time no more than:

1. Six (6) class C licenses. Any revision to the number of class C licenses shall require a supermajority two-thirds ( $\frac{2}{3}$ ) vote of the City Council.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

2. Six (6) class G licenses.
  3. The number of class D licenses shall be limited as follows:
    - 3.1. The number of class D licensed establishments which are located in shopping centers comprised of at least sixty thousand (60,000) square feet of gross building floor area, but less than one hundred thousand (100,000) square feet of building area, and those which are grandfathered shall be limited to a total of fourteen (14).
      - 3.1.1. Notwithstanding the provisions of Subsection 3-3-13:4 of this Section, upon the abandonment, sale, transfer, assignment, revocation or donation of the business that underlies the license to any third party or person other than the licensee, the license shall automatically become void and the number of available licenses in that classification as authorized by the corporate authorities shall automatically and immediately be reduced by one.
    - 3.2. There shall not be a limitation in the number of class D licensed establishments located in shopping centers comprised of one hundred thousand (100,000) square feet or more of gross building floor area.
  4. The square footage requirements for class D licenses are not applicable to renewal of existing class D licenses, and shall not preclude the issuance of a liquor license to the purchaser of an established premises for which a liquor license has been previously issued.
  5. Seven (7) class M licenses.
  6. One (1) class P license.
  7. The number of late night permits shall be limited as follows:
    - 7.1. The number of late night permits which are issued for premises located in the downtown as defined in this Chapter shall be limited to a total of eighteen (18) permits. The total number of late night permits located in the downtown shall automatically reduce by one (1) on the date that such permit is revoked, surrendered, expired without renewal, or abandoned.
    - 7.2. The number of late night permits which are issued for premises not located in the downtown as defined in this Chapter shall be limited to a total of thirty-six (36) permits. The total number of late night permits not located in the downtown shall automatically reduce by one (1) on the date that such permit is revoked, surrendered, expired without renewal, or abandoned.
- (Ord. No. 05-135, 7-19-2005; Ord. 0No. 7-239, 11-6-2007; Ord. No. 08-085, 5-6-2008; Ord. No. 08-132, 8-4-2008; Ord. No. 11-044, § 1, 3-15-2011; Ord. No. 11-117, § 1, 8-16-2011; Ord. No. 11-134, § 2, 9-20-2011; Ord. No. 12-004, § 4, 1-17-2012; Ord. No. 12-055, § 2, 6-5-2012; Ord. No. 12-061, § 2, 6-5-2012; Ord. No. 12-077, § 1, 6-19-2012; Ord. No. 12-143, § 1, 11-20-2012)

#### **Editor's note—**

Ord. No. 12-055, § 2, adopted June 5, 2012, changed the title of section 3-3-13 from "Number of liquor licenses issued" to "Number of liquor licenses and permits issued." The historical notation has been preserved for reference purposes.

#### **3-3-14: INCOMPLETE OR INACCURATE APPLICATIONS:**

1. Applications for liquor or tobacco licenses which are incomplete, inaccurate or fail to contain the statements or information required by Section 3-3-4 of this Chapter shall be rejected by the local Liquor and Tobacco Control Commissioner. The Commissioner shall issue a written rejection of such application setting forth the deficiencies in said application within sixty (60) days of its receipt by the Commission or City Clerk in their behalf. Prior to such rejection, the applicant may submit the

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

additional information or statements required to complete such application in accordance with Section 3-3-4 of this Chapter.

2. Administrative or legal expenses incurred in reviewing incomplete or inaccurate liquor or tobacco license applications, advising the applicant of such deficiencies and rejecting such applications shall be paid by the applicant. A bill or invoice shall be submitted to the applicant specifying the additional administrative or legal expenses incurred in processing the applicant's incomplete liquor or tobacco license application, which shall be paid by the applicant together with the annual license fee prior to the issuance of such license.

(Ord. 92-144, 8-4-1992)

#### **3-3-15: ENTERTAINMENT, FEES:**

1. Any person or legal entity holding a valid local liquor license under this Chapter may be issued an entertainment permit, upon the payment of an additional annual fee of five hundred dollars (\$500.00) and upon the approval of the local Liquor and Tobacco Control Commissioner. The permit may allow the following activities within the licensed premises: live music provided by a soloist or group not to exceed eight (8) persons, dancing by patrons only, personal appearances of amateur or professional entertainers other than dancers, and the showing of commercially produced motion pictures or videos. Said permit shall be issued as a condition of the local retail liquor license and shall be suspended, revoked or nonrenewed concurrently with the local retail liquor license. Any permit issued pursuant to this Section may also be the subject of suspension, revocation or nonrenewal as provided for in this Chapter, for any violation of City or State public health or fire prevention ordinances or statutes or for any violation of Chapter 9, "Amplifiers", of this Title.

(Ord. 08-085, 5-6-2008)

#### **3-3-16: DISPOSITION OF FEES AND FINES:**

All license, permit and application fees shall be paid to the Finance Director at the time application is made and all fines and penalties shall be paid to the Finance Director within two (2) business days of the entry of the fine and penalty, unless otherwise ordered by the local Liquor and Tobacco Control Commissioner. Although the license is payable at the time of making application for license, the local Liquor and Tobacco Control Commissioner may divide the annual license fee into two (2) payments, each payable semiannually. In the event the license applied for is denied, the fee shall be returned to the applicant. If the license is granted, then the fee shall be deposited as set forth above, and no portion thereof shall be refunded.

All such tobacco fees and penalties, but not costs assessed under Section 3-3-24-5 of this Chapter shall be allocated to the City of Naperville Department of Human Resources to be used to fund tobacco use and abuse prevention programs.

(Ord. 92-144, 8-4-1992)

#### **3-3-17: CONDITIONS OF LIQUOR LICENSE:**

1. Closing Hours:

- 1.1. No liquor license holder, or late night permit holder licensed or permitted hereunder as a seller of alcoholic liquor shall sell or permit to be sold, offer for sale, give away or permit to be consumed any alcoholic liquor between the hours of one o'clock (1:00) a.m. and seven o'clock

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

(7:00) a.m., except that sales may be made up to two o'clock (2:00) a.m. on Saturday and Sunday mornings. No Class B Restaurant and Tavern liquor license holder and no class U Specialty Market liquor license holder shall sell or permit to be sold, offer for sale, give away or permit to be consumed any alcoholic liquor between the hours of eleven o'clock (11:00) p.m. and seven (7:00) a.m. on any day. However, no such sales shall be made between two o'clock (2:00) a.m. and twelve o'clock (12:00) noon on Sunday, except that restaurants holding a Class A license may sell alcoholic liquor after ten o'clock (10:00) a.m. on Sundays. All patrons; customers and all persons other than the licensee and employees thereof, in the actual pursuit of their duties as such, shall leave the premises not later than fifteen (15) minutes following the closing hours established, except that on New Year's Eve in any given year, sales provided for in this Chapter may be made to three o'clock (3:00) a.m. (Ord. No. 12-004, § 3, 1-17-2012)

- 1.1.1. Notwithstanding the provisions of Subsection 3-3-17.1.1 of this Section, class D (package store) and class G (beer and wine package sales) licensees are authorized to sell alcoholic liquor in its original package, not for consumption on the premises sold, after the hour of eight o'clock (8:00) a.m. on Sundays.
- 1.2. Notwithstanding the provisions of Subsection 3-3-17.1.1 of this Section, class A, B, I, J, K and U licensees are authorized to sell alcoholic beverages after the hour of ten o'clock (10:00) a.m. on Sundays, but only for consumption in the dining facilities of the licensee's restaurant in conjunction with and incidental to the purchase (for fair consideration) and consumption of a sit down meal. Class A, B, I, J, K and U licensees are not authorized to sell alcoholic liquor or beverages from a tavern or customer bar between the hours of ten o'clock (10:00) a.m. and twelve o'clock (12:00) noon on Sundays.
- 1.3. In the case of restaurants, hotels, recreational facilities, specialty markets and licensees selling packaged liquors, where the sale of alcoholic liquor is conducted on premises which are utilized primarily for other retail sales activities, such establishments may be kept open for business after the closing hours set forth herein, but no alcoholic liquor may be sold, offered for sale, or given away after said closing hours, and no person other than the licensee and employees of the licensee in the actual active pursuit of their employment shall be permitted to remain in or upon that portion of the premises, used during opening hours, for the dispensation of alcoholic liquors.
2. Election Days: Licensees may sell at retail any alcoholic liquor on the day of any national, State, county or municipal election, including primary elections, during the hours the polls are open, within the political area in which such election is being held.
3. Refilling Original Liquor Packages: No person licensed under this Chapter shall fill or refill, in whole or in part, any original package of alcoholic liquor with the same or any other kind or quality of alcoholic liquor; and it shall be unlawful for any person to have in his possession for sale at retail any bottles, casks, or other containers containing alcoholic liquor, except in original packages, excepting vinous beverages and pitchers of beer as permitted herein.
4. Quantity Sales For On Premises Liquor Consumption: It shall be unlawful for any licensee, other than a class I or class J licensee offering restaurant service, and possessing a bottle permit, within the meaning of that term as defined in this Chapter, to sell, give away or permit to be sold, served or given away for consumption on the licensed premises any distilled spirits except by the glass, in individual servings not to exceed three (3) fluid ounces or beer not to exceed twenty-four (24) fluid ounces.
  - 4.1. Reduced Prices Or Promotional Drinks: It shall be unlawful for any licensee licensed hereunder to sell, offer for sale, dispense or serve any alcoholic beverages at reduced prices, or promotional drinks, except as authorized as liquor tasting in Subsection 3-3-11.4 of this Chapter for class D licensees.
  - 4.2. Happy Hours Prohibited:

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 4.2.1. All retail liquor licensees shall maintain a schedule of the prices charged for all drinks of alcoholic liquor to be served and consumed on the licensed premises or in any room or part thereof. Whenever a class A, B, C, I or J license holder operates on its premises more than one establishment at which drinks of alcoholic liquor are sold at retail, the license holder shall maintain at each such establishment a separate schedule of the prices charged for such drinks at the establishment.
- 4.2.2. No retail liquor licensee or employee or agent of such licensee shall:
- 4.2.2.1. Serve two (2) or more drinks of alcoholic liquor at one time to one person for consumption by that one person, except selling or delivering wine by the bottle or carafe;
  - 4.2.2.2. Sell, offer to sell or serve to any person an unlimited number of drinks of alcoholic liquor during any set period of time for a fixed price, except at private functions not open to the general public;
  - 4.2.2.3. Sell, offer to sell or serve any drink of alcoholic liquor to any person on any one date at a reduced price other than that charged other purchasers of drinks on that day where such reduced price is a promotion to encourage consumption of alcoholic liquor, except as authorized in Subsection 3-3-17.4.2.3.7 of this Section;
  - 4.2.2.4. Increase the volume of alcoholic liquor contained in a drink, or the size of a drink of alcoholic liquor, without increasing proportionately the price regularly charged for the drink on that day;
  - 4.2.2.5. Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or the awarding of drinks of alcoholic liquor as prizes for such game or contest on the licensed premises; or
  - 4.2.2.6. Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under Subsections 3-3-17.4.2.2.1 through 3-3-17.4.2.2.5 of this Section.
- 4.2.3. Nothing in Subsection 3-3-17.4.2.2 of this Section shall be construed to prohibit a liquor licensee from:
- 4.2.3.1. Offering free food or entertainment at any time;
  - 4.2.3.2. Including drinks of alcoholic liquor as part of a meal package;
  - 4.2.3.3. Including drinks of alcoholic liquor as part of a hotel package;
  - 4.2.3.4. Negotiating drinks of alcoholic liquor as part of a contract between a class A, B, C, I or J liquor license holder and another group for the holding of any function, meeting, convention or trade show on the premises of the licensee;
  - 4.2.3.5. Providing room service to persons renting rooms at a hotel;
  - 4.2.3.6. Selling pitchers (or the equivalent, including, but not limited to, buckets), carafes, or bottles of alcoholic liquor which are customarily sold in such manner and delivered to two (2) or more persons at one time; or
  - 4.2.3.7. Increasing prices of drinks of alcoholic liquor in lieu of, in whole or in part, a cover charge to offset the cost of special entertainment not regularly scheduled.
- 4.2.4. A violation of this Section shall be grounds for suspension or revocation of the retailer's liquor license as provided in this Chapter and 235 Illinois Compiled Statutes 5/7-5 et seq.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

5. Displaying Liquor And Tobacco Licenses: Every liquor and tobacco licensee shall cause the license or licenses to be framed and hung in plain view in a conspicuous place on the licensed premises.
6. Political Campaign Contributions Prohibited:
  - 6.1. It is unlawful for any licensee or an individual owning directly or beneficially more than five percent (5%) of the corporation stock of any licensee, where more than five percent (5%) of the licensee's gross income is derived from the sale of alcoholic liquor, to become liable for, pay or make any contribution exceeding one hundred fifty dollars (\$150.00) directly or indirectly toward the nomination, campaign fund or expenses of the Mayor or any candidate for the office of Mayor of the City. "Gross income" shall mean income or receipts before any deductions. "Contribution" shall mean monetary contributions having monetary value or any in-kind contributions having monetary value.
  - 6.2. Any person violating this Section shall be fined not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00) for each offense, and shall be subject to imprisonment for not more than thirty (30) days; and shall subject such liquor license to suspension or revocation in the manner provided in this Chapter.
7. Corkage:
  - 7.1. Corkage authorizes class A, B, I and J licensees to permit its patrons to bring into the licensed premises wine or vinous beverages to be consumed therein.
  - 7.2. Consumption of such wine or vinous beverages shall only be permitted by patrons who order a full meal from the licensee. Every such bottle shall be opened by the licensee, its agent or employee.
  - 7.3. It shall be unlawful for the licensee, its agent or employee to permit any patron to leave the licensed premises with open liquor.

(Ord. No. 89-260, 12-18-1989; Ord. No. 92-144, 8-4-1992; Ord. No. 93-162, 9-7-1993; Ord. No. 09-036, 4-8-2009; Ord. No. 09-039, 4-8-2009; Ord. No. 10-120, § 1, 10-5-2010; Ord. No. 11-040, § 1, 3-15-2011; Ord. No. 12-144, § 3, 11-20-2012)

### **3-3-18: LIQUOR MANUFACTURERS AND DISTRIBUTORS, RESTRICTIONS:**

#### **3-3-18-1: LOANS AND CREDIT:**

1. No person holding a liquor license under this Chapter shall accept, receive or borrow money or anything of value directly or indirectly from any person connected with or in any way representing any manufacturer or distributor of any coin operated or amusement device who shall install or furnish such device for use on the licensed premises; provided that the provisions of this Section shall not apply to commissions or rental fees arising out of the use of such coin operated or amusement device on the licensed premises.
2. It is unlawful for any person having a retailer's liquor license or any officer, associate, member, representative or agent of such licensee to accept, receive or borrow money or anything else of value, or accept or receive credit (other than merchandising credit in the ordinary course of business for a period not to exceed thirty (30) days) directly or indirectly from any manufacturer, importing distributor or distributor of alcoholic liquor, or from any person connected with or in any way representing or from any members of the family of, such manufacturer, importing distributor, distributor or wholesaler, or from any stockholders in any corporation engaged in manufacturing, distributing or wholesaling of such liquor, or from any officer, manager, agent or representative of said manufacturer.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

3. It is unlawful for any manufacturer or distributor or importing distributor of alcoholic liquor to give or lend money or anything of value, or otherwise loan or extend credit (except such merchandising credit) directly or indirectly to any retail licensee or to the manager, representative, agent, officer or director of such licensee. No retail liquor licensee delinquent beyond such 30-day period shall solicit, accept or receive credit, purchase or acquire alcoholic liquors, directly or indirectly from any other licensee, and no manufacturer, distributor or importing distributor shall knowingly grant or extend credit, sell, furnish or supply alcoholic liquors to any such delinquent retail licensee; provided that the purchase price of all beer sold in returnable bottles shall expressly include a charge for the bottles and cases, the retail licensee shall, on or before delivery of such beer, pay the seller in cash a deposit in an amount not less than the deposit required to be paid by the distributor to the brewer; but where the brewer sells direct to the retailer, the deposit shall be an amount no less than required by the brewer from its own distributors; and provided further, that in no instance shall this deposit be less than fifty cents (\$0.50) for each case of beer in pint or smaller bottles, and sixty cents (\$0.60) for each case of beer in quart or half gallon bottles.

Nothing herein contained shall prohibit any liquor licensee from crediting or refunding to a purchaser the actual amount of money paid for bottles, cases, kegs or barrels returned by the purchaser to the seller, or paid by the purchaser as a deposit on bottles, cases, kegs or barrels when such containers or packages are returned to the seller.

4. No right of action shall exist for the collection of any claim based upon credit extended to a distributor, importing distributor or retail liquor licensee contrary to the provisions of this Section.
5. The 30-day merchandising credit period allowed by this Section shall commence with the date immediately following the date of the invoice and shall include all successive days including Sundays and holidays, to and including the thirtieth successive day.
6. In addition to other methods allowed by law, payment by check during the period for which merchandising credit may be extended under the provisions of this Section shall be considered payment. All checks received in payment for alcoholic liquor shall be promptly deposited for collection. A postdated check or a check dishonored on presentation for payment shall not be deemed payment.
7. A retail liquor licensee shall not be deemed to be delinquent in payment for any alleged sale to him of alcoholic liquor when there exists a bona fide dispute between such retailer and a manufacturer, importing distributor or distributor with respect to the amount of indebtedness existing because of such alleged sale.
8. The license of any person who violates any provision of this Section shall be subject to suspension or revocation in the manner provided.

(Ord. 92-144, 8-4-1992)

#### **3-3-18-2: FURNISHING EQUIPMENT OR SIGNS TO RETAILERS:**

1. Except as otherwise herein provided, no manufacturer or distributor or importing distributor shall, directly or indirectly, sell, supply, furnish, give or pay for, or loan or lease, any furnishing, fixture or equipment on the premises of a place of business of a licensee authorized under this Chapter to sell alcoholic liquor at retail, either for consumption on or off the premises, nor shall they, directly or indirectly, pay for any such license, or advance, furnish, lend or give money for payment of such license, or purchase, or become the owner of, a note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor, nor shall such manufacturer, or distributor, or importing distributor, directly or indirectly, be interested in the ownership, conduct or operation of the business of any licensee authorized to sell alcoholic liquor at retail, nor shall any manufacturer, or distributor, or importing distributor be interested directly or indirectly, or as owner or part owner of

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

said premises or as lessee or lessor thereof, in any premises upon which alcoholic liquor is sold at retail.

2. No manufacturer or distributor or importing distributor shall sell, directly or indirectly, or through a subsidiary or affiliate, or by any officer, director or firm of such manufacturer, distributor or importing distributor, furnish, give, lend or rent, install, repair or maintain, to or for any retail liquor licensee, any interior decorations or signs except as herein provided.
3. A manufacturer or distributor or importing distributor may furnish, give, lend or rent and erect, install, repair and maintain for any retail liquor licensee, for use at any one time in or about or in connection with a retail establishment on which the products of the manufacturer, distributor or importing distributor are sold: one outside sign and one or more inside signs, whether visible from the outside or the inside of the premises, all of which shall advertise only said products, window painting and window trim, including decalcomanias, costing in the aggregate not more than seven hundred dollars (\$700.00) in any one calendar year, exclusive of erection, installation, repair and maintenance costs and permit fee with respect to outside and inside signs; also other advertising materials, such as posters, placards, coasters, trays, bowling sheets and similar printed or illustrated material, in place and in use at any one time, costing in the aggregate not more than sixty dollars (\$60.00). Nothing in this Chapter shall be construed as affecting existing window painting or window trim, including decalcomanias, or as affecting existing outdoor or inside signs, installed in or on or about the premises of any retail establishment in the City on or prior to July 1945, but not such existing sign shall thereafter be installed or used on the premises of any other retailer in this City unless it shall comply with the foregoing limitations, where not inconsistent or in violation with other ordinances of the City.
4. No person engaged in the business of manufacturing, importing or distributing alcoholic liquors shall, directly or indirectly, pay for, or advance, furnish or lend money for the payment of any license for another. Any licensee who shall permit or assent, or be a party in any way to any violation or infringement of the provisions of this Section shall be deemed guilty of a violation of this Chapter, and any money loaned contrary to a provision of this Section shall not be recovered back, or any note, mortgage or other evidence of indebtedness, or security or any lease or contract obtained or made contrary to this Chapter shall be unenforceable and void.

(Ord. 92-144, 8-4-1992)

#### **3-3-19: LOCATION, BUILDING AND PREMISES RESTRICTIONS:**

##### **3-3-19-1: LOCATION RESTRICTIONS, LIQUOR:**

1. No license, other than a class K catering license, shall be issued for the sale at retail of any alcoholic liquor within one hundred (100) feet of any church, school, hospital, home for the aged or for indigent persons or for veterans, their wives or children, or any military or naval station; provided that this prohibition shall not apply to hotels offering restaurant service, regularly organized clubs, or to restaurants or other places where sale of alcoholic liquors is not the principal business carried on, if such place of business or use so exempted shall have been established for such purposes prior to the establishment of any such church, school, home for the aged or indigent persons or for veterans, their wives or children, or any military or naval station, nor to the renewal of a license for the sale at retail of alcoholic liquor on premises within one hundred (100) feet of any church or school, where such church or school has been established within such one hundred (100) feet since the issuance of the original license. In the case of a church, the distance of one hundred (100) feet shall be measured to the nearest part of any building used for worship services or educational programs and not to property boundaries.

(Ord. 00-157, 9-19-2000)



## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

2. Nothing in this Section shall prohibit the issuance of a license to a church or private school to sell at retail alcoholic liquor, if any such sales are limited to periods when groups are assembled on the premises solely for the promotion of some common object other than sale or consumption of alcoholic liquor.
3. No such license shall be issued to any person for the sale of any alcoholic liquor at any store or other place of business where the majority of customers are minors of school age, or where the principal business transacted consists of schoolbooks, school supplies, food, lunches or drinks for such minors.

(Ord. 87-18, 2-2-1987)

4. A license issued hereunder shall permit the sale of alcoholic liquor only in the premises described in the application and license. Such location may be changed only when and upon the written permit to make such change shall be issued by the local Liquor and Tobacco Control Commissioner. No change of location shall be permitted unless the proposed new location is in compliance with the provisions and regulations of this Chapter.

(Ord. 92-144, 8-4-1992)

5. There shall not be permitted hereunder any change in liquor license designation or classification other than to a restaurant classification. The exemption extended hereunder shall terminate upon the premises' abandonment, nonuse or occupancy as a liquor licensed premises for a period exceeding ninety (90) days.

(Ord. 07-239, 11-6-2007)

#### **3-3-19-2: VIEW FROM STREET:**

In premises upon which the sale of alcoholic liquor for consumption on the premises is licensed (other than as a restaurant, hotel, recreational facility or club) no screen, blind, curtain, partition, article or thing shall be permitted in the windows or upon the doors of such licensed premises nor inside such premises, which shall prevent a clear view into the interior of such licensed premises from the street, road or sidewalk at all times, and no booth, screen, partition, or other obstruction nor any arrangement of lights or lighting shall be permitted in or about the interior of such premises which shall prevent a clear view of the entire interior from the street, road or sidewalk. All rooms where liquor is sold for consumption on the premises shall be continuously lighted during business hours by natural light or artificial white light so that all parts of the interior of the premises shall be clearly visible. In case the view into any such licensed premises required by the foregoing provisions shall be wilfully obscured by the licensee, or be permitted to be obscured or in any manner obstructed, then such license shall be subject to revocation in the manner herein provided. In order to enforce the provisions of this Section, the Mayor shall have the right to require the filing of plans, drawings, and photographs showing the clearance of the view as above required.

(Ord. 92-144, 8-4-1992)

#### **3-3-19-3: LOCATION RESTRICTIONS, TOBACCO:**

1. It shall be unlawful to sell, offer for sale, give away or deliver any tobacco product from a vending machine.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

2. Any person who violates this Section shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Ord. 92-144, 8-4-1992; Ord. No. 12-031, § 3, 4-3-2012)

#### **3-3-19-4: SANITARY CONDITIONS:**

All premises used for the retail sale of alcoholic liquor, or for the storage of such liquor for sale, shall be kept in full compliance with the ordinances regulating the condition of premises used for the storage or sale of food for human consumption.

(Ord. 92-144, 8-4-1992)

#### **3-3-19-5: PREMISES RESTRICTIONS:**

1. No tobacco or liquor licensed premises shall be operated or occupied in violation of any building, fire, health or safety code, rule, regulation, occupancy or capacity limitation established or adopted by the City of Naperville or the State of Illinois.
2. Maximum capacity or occupancy restrictions shall be established for each premises by the Naperville Fire Department and the building Department under the Life Safety Code, and shall be posted in no less than two (2) prominent locations in the particular premises.

(Ord. 92-144, 8-4-1992)

#### **3-3-20: PERSONNEL RESTRICTIONS, LIQUOR LICENSES:**

1. Change In Personnel:
  - 1.1. Any changes in partnerships, officers, directors, persons holding directly or beneficially more than five percent (5%) of the stock or ownership interest, managers or assistant managers of establishments licensed to sell liquor under this Chapter shall be reported in writing to the Liquor and Tobacco Control Commissioner within ten (10) days of the change. All such new personnel shall meet all the standards of this Chapter and must otherwise qualify to hold a liquor license. All such changes in personnel shall be subject to review by the local Liquor and Tobacco Control Commissioner.
  - 1.2. When a liquor license has been issued to a partnership and a change of ownership occurs resulting in a partnership interest by one who is not eligible to hold a liquor license, said license shall terminate.
  - 1.3. When a liquor license has been issued to a corporation, and a change takes place in officers, directors, managers or shareholders of more than five percent (5%) of the stock, resulting in the holding of office or such shares of stock by one who is not eligible for a license, said license shall terminate.
  - 1.4. When a liquor license has been issued to an individual who is no longer eligible for a license, said license shall terminate.
2. Employees: It shall be unlawful to employ in any premises used for the retail sale of alcoholic liquor any person who is afflicted with, or who is a carrier of, any contagious, infectious or venereal disease; and it shall be unlawful for any person who is afflicted with or is a carrier of any such disease to work in or about any premises or to engage in any way in the handling, preparation or

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

distribution of such liquor. No employee, agent or manager, while on duty within the premises, shall use or consume any illegal drugs or alcoholic liquor, or be under the influence of illegal drugs or alcoholic liquor.

3. Manager On Duty: At all times when the liquor license is in effect a licensee shall have on duty a manager, assistant manager or owner who is listed as managerial staff in the liquor license application of the licensee.
4. Training Requirements: Every owner, manager, assistant manager, as well as every bartender, agent and employee who dispenses, sells, delivers or serves alcoholic liquor, shall provide evidence of successful completion of a beverage alcoholic sellers and servers education training program at a facility approved under 20 Illinois Compiled Statutes 305/1-101 et seq. Persons holding class E or class L licenses, together with their employees and agents, shall be exempt from this requirement. For class K, catering licenses, the training program requirement stated in this Subsection shall only apply to the licensee, its officers and managers, at least one of whom has successfully completed the training program, shall be at the location where alcoholic liquor is being served during the catered event. Such person(s) shall have supervisory authority over and be responsible for the actions of all employees not having the required training.

(Ord. 92-144, 8-4-1992; Ord. 96-251, 12-17-1996)

#### **3-3-21: PROHIBITED ACTS AND CONDITIONS:**

1. Peddling: It shall be unlawful to peddle tobacco or alcoholic liquor in the City.
2. Gambling: It shall be unlawful to permit any gambling on any premises licensed to sell tobacco or alcoholic liquor.
3. Solicitation: It shall be unlawful for any tobacco or liquor licensee, manager or other person in charge of any licensed premises where tobacco products or alcoholic liquor is sold or offered for sale for consumption thereon to engage, employ or permit the engagement or employment of any person, nor shall any person be permitted to remain on said premises, who shall solicit any patron or customer thereof to purchase tobacco products or alcoholic or nonalcoholic liquor or sexual favors or services for herself, himself, or any other person; nor shall any person, whether employer, entertainer or otherwise, solicit any patron or customer therein to purchase tobacco products, alcoholic or nonalcoholic liquor for herself, himself or any other person therein; provided, however, that nothing herein contained shall prohibit any adult manager, waitress, or waiter who shall be regularly employed therein from accepting and serving the order of a patron or customer in the regular course of employment as such manager, waitress, or waiter.
4. Obscenity At Licensed Establishments:
  - 4.1. No licensee, his agent, manager or employee shall allow or permit any person at any licensed establishment which may be accessible by the public any of the following acts or acts which simulate:
    - 4.1.1. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
    - 4.1.2. The actual or simulated touching, caressing or fondling of breast, buttocks, anus or genitals.
    - 4.1.3. The actual or simulated displaying of the female breast or the display of the female breast with any type of material which is less than fully opaque.
    - 4.1.4. The actual or simulated displaying of pubic hair, anus, vulva or genitals.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 4.1.5. The displaying of books, magazines, coin operated motion picture devices, films, movies, videos or photographic slide presentations depicting acts of which a live performance is prohibited by this Subsection 3-3-21.4.
- 4.2. No licensee, his agent, manager or employee shall permit or allow any person to remain in or upon the licensed premises who exposes to public view any portion of her breast or his or her genitals or anus.
- 4.3. No licensee, his agent, manager or employee shall permit or allow any person to wear or display by live models, undergarments, sleepwear, lingerie and/or swimming attire.
- 4.4. Nudity and seminudity prohibited:
  - 4.4.1. No person or entity licensed under the provisions of this Chapter, or any agent, officer, manager or employee of any person or entity, shall allow, permit, contract or otherwise participate in any kind of agreement or arrangement which allows any person to appear before or amidst the public in attendance at any establishment to which said license has been issued, in the nude or in any kind of apparel, which as worn by virtue of its design, fit or material, makes visible or tends to make visible all or any portion of a person's:
    - 4.4.1.1. Genitalia;
    - 4.4.1.2. Pubic hair or pubic hair region;
    - 4.4.1.3. Anus and/or anal crevice; and
    - 4.4.1.4. If such person is a female, her breasts, below and including areola.
  - 4.4.2. No person shall appear or enter into any kind of agreement or arrangement which allows or requires such person to appear before or amidst the public in attendance at a licensed establishment under the provisions of this Chapter, in the nude or in apparel such as that described in Subsection 3-3-21.4.4.1 of this Section.
- 4.5. Any person or entity licensed under the provisions of this Chapter, or any agent, manager, officer or employee of any such person or entity, who violates any section of this provision, shall be subject to a fine, suspension or revocation of their license.
- 4.6. The above prohibitions shall not apply to private guestrooms provided by the holders of class I and class J licenses.
- 5. Sale of Synthetic Alternative Drugs: It shall be unlawful to advertise, offer for sale, display, sell, give away, deliver or possess any product containing a synthetic alternative drug.  
(Ord. 92-144, 8-4-1992; Ord. 07-081, 5-1-2007; Ord. No. 12-031, § 4, 4-3-2012)

### **3-3-22: PERSONS OF NONAGE, LIQUOR:**

#### **3-3-22-1: SALES TO PERSONS OF NONAGE AND HABITUAL DRUNKARDS, MENTAL INCOMPETENTS AND INTOXICATED PERSONS:**

- 1. No licensee or officer, associate, member, representative, agent or employee of a liquor licensee shall sell, give or deliver alcoholic liquor to any person under the age of twenty-one (21) years, or to any intoxicated person, or to any person known to be a habitual drunkard, insane, mentally ill, mentally deficient or in need of mental treatment. No person, after purchasing or otherwise obtaining alcoholic liquor, shall sell, give or deliver such alcoholic liquor to another person under the age of twenty-one (21) years except in the performance of a religious ceremony or service. It shall be unlawful for any person under the age of twenty-one (21) years to misrepresent his or her age for the

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

purpose of purchasing or obtaining alcoholic liquor in any place in the City where alcoholic liquor is sold.

(Ord. 92-144, 8-4-1992)

2. In every place in the City where alcoholic liquor is sold, there shall be displayed at all times in a prominent place a printed card which shall be supplied by the City clerk and which shall read substantially as follows:

**WARNING TO PERSONS  
UNDER THE AGE OF 21 YEARS**

*You are subject to a fine up to five hundred dollars (\$500.00) under the ordinances of the City of Naperville if you purchase or attempt to purchase alcoholic liquor, or misrepresent your age for the purpose of purchasing or obtaining alcoholic liquor.*

(Ord. 87-18, 2-2-1987)

3. It shall be unlawful for any holder of a liquor license, or his or her agent or employee, to suffer or permit any person under the age of twenty-one (21) to be or remain in any room or compartment adjoining or adjacent to or situated in the room or place where such licensed premises is located; provided that this Subsection shall not apply to any person under the age of twenty-one (21) who is accompanied by his or her parent or guardian, or to that portion of any licensed premises which derives its principal business from the sale of service or commodities other than alcoholic liquor. In addition to all other fines and penalties, the local Liquor and Tobacco Control Commissioner may suspend or revoke the liquor dealer's license for any violation of this Subsection.

(Ord. 92-144, 8-4-1992)

4. It shall be unlawful for any parent or guardian to knowingly permit any person under the age of twenty-one (21) of which he or she be parent or guardian to violate any provisions of this Section.
5. It shall be unlawful to sell, give or deliver alcoholic liquor to any person under the age of twenty-one (21).
6. It shall be unlawful for any person under the age of twenty-one (21) to tend bar.
7. It shall be unlawful for any person under the age of twenty-one (21) to draw, pour or mix any alcoholic liquor in any licensed retail premises, and it shall be unlawful for any person under the age of twenty one (21) years to dispense, sell or deliver any alcoholic liquor in the original package, bottle or case for consumption off the premises of any licensed establishment. Except for the prohibitions provided for in this Section, it shall be lawful for any person eighteen (18) years of age or older to work in a licensed premises, and to serve alcoholic liquor.

(Ord. 87-18, 2-2-1987)

#### **3-3-22-2: PURCHASE, POSSESSION, OR ACCEPTANCE OF GIFT BY PERSONS OF NONAGE; PRESENCE RESTRICTION; IDENTIFICATION CARDS:**

1. Purchase Or Possession Of Alcoholic Liquor By Persons Of Nonage:
  - 1.1. Any person to whom the sale, gift or delivery of alcoholic liquor is prohibited because of age shall not purchase or attempt to purchase or accept a gift of alcoholic liquor or have alcoholic liquor in his or her possession.
2. Presence Restriction:

(Ord. 03-153, 7-15-2003)

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

2.1. It shall be unlawful for any person under the age of nineteen (19) to be or to remain in any room, apartment, house, place or vehicle which is not licensed for the sale of alcoholic liquor under this Chapter, when such person knows alcoholic liquor is being consumed by persons under the age of nineteen (19) therein, except as otherwise provided in this Chapter; provided however, a person shall not be in violation of this Subsection where the room, apartment or house is that person's actual place of domicile, unless that person permits the use of the room, apartment or house when such person knows or in the exercise of ordinary care should know of a substantial probability that such place is or will be used by persons under the age of nineteen (19) for the consumption or possession of alcoholic liquor.

(Ord. 04-226, 12-21-2004)

#### 3. Identification Cards:

3.1. If a liquor licensee or such licensee's agents or employees believe, have reason to believe or should have reason to believe that a sale or delivery of alcoholic liquor is prohibited because of the nonage of the prospective recipient, such licensee, agent or employee shall, before making such sale or delivery, demand presentation of some form of positive identification (containing proof of age) issued by a public officer in the performance of his official duties. Reasonable care in compliance with the provisions of this Subsection shall be competent evidence and may be considered in prosecution, revocation or suspension for the violation of any section of this Chapter relating to revocation or suspension for the violation of any other provision of this Chapter.

(Ord. 92-144, 8-4-1992; amd. Ord. 03-153, 7-15-2003)

3.2. No person shall transfer, alter or deface such an identification card, use the identification card of another, carry or use a false or forged identification card, or obtain an identification card by means of false information. No person shall purchase, accept delivery or have possession of alcoholic liquor in violation of this Section.

4. Consumption: The consumption of alcoholic liquor by any person under the age of twenty-one (21) years is forbidden.

5. Exception: The possession and dispensing, or consumption by a person under the age of twenty-one (21) of alcoholic liquor in the performance of a religious service or ceremony under the direct supervision and approval of the parents or parent of such underage person in the privacy of a home is not prohibited.

(Ord. 87-18, 2-2-1987; amd. Ord. 03-153, 7-15-2003)

#### 6. Operation Of A Motor Vehicle:

6.1. Under Twenty-One (21): It shall be unlawful for any person under the age of twenty-one (21) years who has any amount of alcohol content in their blood to operate a motor vehicle.

6.2. Penalties: Any person who violates the provisions of this Subsection 3-3-22-2.6 shall be guilty of a class C misdemeanor.

(Ord. 95-135, 7-5-1995; amd. Ord. 03-153, 7-15-2003)

### **3-3-22-3: PARENTAL AND VICARIOUS RESPONSIBILITY:**

#### 1. Definitions:

INTENTIONALLY:	Conduct engaged in by a person with the conscious objective to accomplish that result or engage in that conduct.
----------------	--

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

KNOWINGLY:	Conduct engaged in by a person when he is consciously aware of the nature or attendant circumstances of his conduct which constitutes an offense under this Section.
LEGAL GUARDIAN:	Any foster parent, person appointed guardian or given custody of a person of nonage by a circuit court of this State, or person appointed guardian or given custody of a person of nonage under the Illinois Juvenile Court Act <sup>[13]</sup> , but shall not include any person appointed guardian only to the estate of a person of nonage.

NEGLIGENCE:	Conduct engaged in by a person where such person fails to be aware of a substantial and unjustifiable risk that circumstances exist or that a result will follow which constitutes an offense under this Section and where such failure constitutes a substantial deviation from the standard of care which a reasonable person would exercise in the situation.
PARENTS:	Includes the father and mother of a child, whether by birth or adoption, or shall be deemed the parent having legal custody of the child in the event the parents are divorced or separated. The term "parent" as used in this Section shall also be deemed to mean "legal guardian".
PERSON OF NONAGE:	Any person not yet twenty-one (21) years of age.
RECKLESSLY:	Conduct engaged in by a person in conscious disregard of a substantial and unjustifiable risk that circumstances exist or that a result will follow which constitutes an offense under this Section, and where such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

2. Consumption By Child: No parent shall give or deliver alcoholic liquor to his or her child if that child is of nonage for the child's consumption, unless the consumption of alcoholic liquor by such child is in the performance of a religious service or ceremony under the direction, supervision, and approval of the parent of such child in the privacy of a home.
3. Possession By Minors: No parent or other person shall intentionally, knowingly, recklessly or negligently give or deliver alcoholic liquor to, or permit possession of alcoholic liquor by, his or her child, or any other person under the age of twenty-one (21), unless such child or person under the

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

age of twenty-one (21) is making a delivery of such alcoholic liquor in pursuance of his employment as allowed in this Chapter, or otherwise as allowed by Subsection 3-3-22-3.2 of this Section.

4. Consumption By Minors: No parent or other person shall intentionally, knowingly, recklessly or negligently give, deliver, invite or permit the consumption of alcoholic liquor by any person of nonage on or about any premises owned, leased or controlled by such parent or person except as otherwise allowed by Subsection 3-3-22-3.2 of this Section.
5. Probability Of Consumption: Parents shall restrain or prevent their children from consuming alcoholic liquor where the parent knows, or in the exercise of ordinary care should know, of a substantial probability that his or her child is or will consume alcoholic liquor under circumstances which would violate the provisions of this Section, the Illinois Liquor Control Act <sup>[14]</sup>, or any other ordinances, Statutes or amendments thereto.
6. Operation Of Vehicles: Parents who know, or in the exercise of ordinary care should know, of a substantial probability that their child has consumed or will consume alcoholic liquor in violation of this Section, the Illinois Liquor Control Act <sup>[15]</sup>, or any other ordinances, Statutes or amendments thereto, shall restrain or prevent their child from operating or driving a motor vehicle on the public streets and ways of the City in violation of any ordinance, law or Statute.
7. Vandalism And Similar Offenses: Parents who know, or in the exercise of ordinary care should know, of a substantial probability that their child has consumed or will consume alcoholic liquor in violation of this Section, the Illinois Liquor Control Act <sup>[16]</sup>, or any other ordinance, Statutes or amendments thereto, shall restrain or prevent their child from committing acts which constitute vandalism, theft, disorderly conduct, or the unjustifiable use of force in violation of any ordinance, law or Statute.  
(Ord. 87-18, 2-2-1987)
8. Hotel And Motel Rooms: No parent or other person shall rent, or otherwise permit the use of any hotel or motel sleeping rooms or suites, when such person knows, or in the exercise of ordinary care should know of a substantial probability that such space will be used by persons of nonage for the consumption or possession, either actual or constructive, of alcoholic liquor, except as otherwise allowed by Subsection 3-3-22-3.2 of this Section.
9. Penalty: Any person convicted of any violation of the provisions of this Section shall be fined not less than two hundred dollars (\$200.00) nor more than one thousand dollars (\$1,000.00) for each offense.

(Ord. 91-186, 10-1-1991)

#### **3-3-23: MINORS, SIGNS, TOBACCO:**

1. It shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or deliver tobacco products by any means, including, without limitation, the use of vending machines, to any person under the age of eighteen (18) years.  
(Ord. 92-144, 8-4-1992)
2. It shall be unlawful for any person to own, operate, maintain or use a vending machine from which tobacco products are available for sale or delivery.  
(Ord. 97-190, 11-4-1997, eff. 5-1-1998)
3. Signs informing the public of the age restrictions provided for in this Section shall be posted by every licensee at or near every display of tobacco products for sale. Each such sign shall be plainly visible and shall state:

*THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW UNDER PENALTY OF FINES OF UP TO FIVE HUNDRED DOLLARS*



## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

*(\$500.00). PERSONS UNDER EIGHTEEN YEARS OF AGE WHO MISREPRESENT THEIR AGE BY ANY MEANS WHATSOEVER ARE SUBJECT TO ASSESSMENT OF FINES OF NOT LESS THAN FIFTY DOLLARS (\$50.00) NOR MORE THAN SEVENTY-FIVE DOLLARS (\$75.00) FOR THE FIRST OFFENSE AND NOT LESS THAN ONE HUNDRED DOLLARS (\$100.00) NOR MORE THAN FIVE HUNDRED DOLLARS (\$500.00) FOR EACH SUBSEQUENT OFFENSE.*

The text of such signs shall be in red letters on a white background, at least one-inch high and shall be in addition to any other warnings required by Statute or ordinance.

(Ord. 97-168, 10-21-1997)

#### **3-3-23-1: MINIMUM AGE TO SELL TOBACCO PRODUCTS:**

1. It shall be unlawful for any licensee and/or any officer, associate, member, representative, agent or employee of such licensee, to engage, employ or permit any person under sixteen (16) years of age to sell tobacco products in any licensed premises.
2. In the event an agent or employee of a licensee younger than eighteen (18) years of age sells tobacco products in any licensed premises, an officer, agent or employee of the licensee who is at least twenty-one (21) years of age shall also be on the licensed premises at the time of such sale.

(Ord. 92-144, 8-4-1992)

#### **3-3-23-2: PURCHASES OF TOBACCO PRODUCTS BY MINORS PROHIBITED:**

1. It shall be unlawful for any person under the age of eighteen (18) years to purchase tobacco products, or to misrepresent his or her age, or to use any false or altered identification for the purpose of purchasing tobacco products.

(Ord. 92-144, 8-4-1992)

2. Except as provided in this Section, it shall be unlawful for any person under eighteen (18) years of age to possess or use any tobacco products.
3. It shall not be a violation of this Section for a person of nonage to use any tobacco products where:
  - 3.1. Such use takes place under the direct supervision and approval of the parent, parents, or legal guardian of such person of nonage; and
  - 3.2. Such use takes place in the privacy of a home or established place of worship or tribal meeting place; provided, however, where such use takes place in an established place of worship or tribal meeting place, such use shall not be a violation only where use is in the performance of a religious service or tribal ceremony and the religious group or tribe is legally established and recognized by the State of Illinois.
4. Any person who violates this Section shall be subject to the following penalties:
  - 4.1. For the first violation within a 12-month period, a fine of not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00), or required attendance at, and completion of, the tobacco education group program, or, if the violator has already attended such program, the tobacco awareness program, at Edward Cardiovascular Institute.
  - 4.2. For the second violation within a 12-month period, a fine of not less than seventy-five dollars (\$75.00) nor more than one hundred fifty dollars (\$150.00), and required attendance at, and completion of, the tobacco education group program, or, if the violator has already attended such program, the tobacco awareness program, at Edward Cardiovascular Institute.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

- 4.3. For the third violation within a 12-month period, a fine of not less than two hundred fifty dollars (\$250.00) nor more than three hundred fifty dollars (\$350.00), and not less than ten (10) hours of community service work, and required attendance at, and completion of, the tobacco awareness program at Edward Cardiovascular Institute provided the violator has not attended and completed that program more than twice during the preceding twenty-four (24) months.
- 4.4. For the fourth or further violation within a 12-month period, a fine of not less than three hundred fifty dollars (\$350.00) nor more than seven hundred fifty dollars (\$750.00), and not less than thirty (30) hours of community service work, and required attendance at, and completion of, the tobacco awareness program at Edward Cardiovascular Institute, provided the violator has not attended and completed that program more than twice during the preceding twenty-four (24) months.

The City Manager may authorize attendance by violators of this Section at other tobacco awareness and cessation programs which are comparable to the Edward Cardiovascular Institute programs, in lieu of attendance at the particular Edward Cardiovascular Institute program required in this Section.

5. Such penalties shall be in addition to any other penalties applicable to offenses as defined in this Code relating to Cannabis sativa.

(Ord. 97-168, 10-21-1997)

#### **3-3-23-3: CERTAIN FREE DISTRIBUTIONS PROHIBITED:**

1. It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting, or advertising tobacco products, or any employee or agent of any such licensee or person, in the course of such licensee's or person's business, to distribute, give away or deliver tobacco products to any person free of charge or to any person on any publicly owned lands or buildings or facilities within the City's corporate boundaries.
2. Any person who violates this Section shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00).

(Ord. 92-144, 8-4-1992; Ord. No. 12-031, § 5, 4-3-2012)

#### **3-3-24: VIOLATION, NONRENEWAL, SUSPENSION AND REVOCATION OF LICENSES AND PERMITS:**

The local Liquor and Tobacco Control Commissioner may impose a fine and/or suspend, revoke or nonrenew any local retail liquor or tobacco license issued by him, or suspend, revoke, or nonrenew any permit issued by him as part of the local retail liquor license if the local Liquor and Tobacco Control Commissioner determines that the licensee has violated any of the following provisions:

1. The licensee has violated, allowed or permitted a violation of any of the provisions of this Chapter, or rules or regulations established by the local Liquor and Tobacco Control Commissioner or the State Commission with respect to liquor licenses, or any law of the State of Illinois as it pertains to the sale of alcoholic liquor.
2. The licensee has violated, allowed or permitted a violation of any law of the State of Illinois or any ordinance of the City of Naperville which affects the public health, safety and welfare and which violation occurred as part of the operation of the licensee's business or upon the licensed premises.

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

3. The licensee is more than sixty (60) days past due in the payment of any debt or tax to the City of Naperville.

(Ord. 08-034, 2-19-2008)

#### **3-3-24-1: VIOLATION OF RETAILERS' OCCUPATION TAX ACT:**

In addition to other grounds specified in this Chapter, the local Liquor and Tobacco Control Commissioner may refuse the issuance or renewal of a retail liquor or tobacco license, or suspend or revoke such license, for any of the following violations of the "Retailers' Occupation Tax Act", approved June 28, 1933, as amended <sup>(171)</sup>:

1. Failure to make a tax return.
2. The filing of a fraudulent return.
3. Failure to pay all or part of any tax or penalty finally determined to be due.
4. Failure to keep books and records.
5. Failure to secure and display a certificate or subcertificates of registration.
6. Wilful violation of any rule or regulation of the Department relating to the administration and enforcement of tax liability.

(Ord. 87-18, 2-2-1987; Ord. 92-144, 8-4-1992)

#### **3-3-24-2: VIOLATION OF FOOD AND BEVERAGE TAX:**

In addition to other grounds specified in this Chapter, the local Liquor and Tobacco Control Commissioner may refuse the issuance or renewal of a retail liquor license, or fine, suspend or revoke such license for any violation of the food and beverage tax, as provided in Section 3-1-9 of this Title.

(Ord. 08-034, 2-19-2008)

#### **3-3-24-3: RESPONSIBILITY FOR AGENTS AND EMPLOYEES:**

For purposes of this Chapter, every licensee shall be deemed responsible for the acts and/or omission to act by his agents or employees whether or not such licensee knowingly permits or has actual knowledge of such unlawful acts or omissions.

(Ord. 08-034, 2-19-2008)

#### **3-3-24-4: SUSPENSION, REVOCATION, AND NONRENEWAL HEARINGS:**

No fine, suspension, revocation or nonrenewal shall be imposed except after a public hearing by the local Liquor and Tobacco Commission unless such hearing is otherwise waived by the licensee. If the Commissioner determines after such hearing that the license or permit should be

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

suspended, revoked, or not renewed, the Commissioner shall state the reason(s) for such a determination in a written order of suspension, revocation or nonrenewal, and shall serve a copy of such order within fifteen (15) days to the licensee. Review of decisions made by the local Liquor and Tobacco Control Commissioner shall be as provided for in 235 Illinois Compiled Statutes 5/7-9, and shall be a record review.

(Ord. 08-034, 2-19-2008)

#### **3-3-24-5: ASSESSMENT OF COSTS OF HEARINGS:**

Any licensee determined by the local Liquor and Tobacco Control Commissioner to have violated any of the provisions of "An Act Relating To Alcoholic Liquor" approved January 31, 1934, as amended, or any ordinance or resolution of the City, or any rule or regulation established by the local Liquor and Tobacco Control Commissioner, or the State Commission, shall pay to the City the costs of the hearing before the local Liquor and Tobacco Control Commissioner on such violation. The local Liquor and Tobacco Control Commissioner shall determine the costs incurred by the City for the hearing, including: court reporter fees, the cost of transcripts or records, attorney fees, the cost of preparing and mailing notices and orders, other miscellaneous expenses incurred by the City. The licensee shall pay said costs to the City within thirty (30) days of notification of the costs by the local Liquor and Tobacco Control Commissioner. Failure to pay said costs within thirty (30) days of notification is a violation of this Section, and may be cause for license revocation or suspension. In the event of an appeal to the State Commission, and in cases where appeal is taken under the Administrative Review Act, payment is due forty (40) days after entry of an order finally affirming the determination of the local Liquor and Tobacco Control Commissioner.

1. The remedies afforded in this Section are not exclusive, and any such sums assessed hereunder may be collected as any other debt.

(Ord. 92-144, 8-4-1992; amd. Ord. 08-034, 2-19-2008)

#### **3-3-24-6: FORFEITURE OF FEES:**

Whenever any license hereunder has been revoked as provided for in this Chapter, the licensee shall incur a forfeiture of all monies that have been paid for said license.

(Ord. 92-144, 8-4-1992; amd. Ord. 08-034, 2-19-2008)

#### **3-3-24-7: USE OF PREMISES AFTER REVOCATION:**

When a license shall have been revoked for any cause, no license shall be granted to any person for the period of one year thereafter for the conduct of the business of manufacturing, distributing or selling alcoholic liquor in the premises described in such revoked license.

(Ord. 92-144, 8-4-1992; amd. Ord. 08-034, 2-19-2008)

## TITLE 3 - BUSINESS AND LICENSE REGULATIONS

### CHAPTER 3 LIQUOR AND TOBACCO CONTROL

#### 3-3-24-8: PENALTY:

Unless otherwise provided in this Chapter, any person violating any provision of this Chapter relating to liquor shall be fined not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00) for each offense. Unless otherwise provided in this Chapter, any person violating any provision of this Chapter relating to tobacco shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Ord. 92-144, 8-4-1992; amd. Ord. 08-034, 2-19-2008; Ord. No. 12-031, § 6, 4-3-2012)

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#### FOOTNOTE(S):

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--- (10) ---

235 ILCS 5/1-3.01 et seq. ([Back](#))

--- (11) ---

**Editor's note**— The exhibit referred to in this definition is not set out at length in this Code, but is on file in the offices of the City. ([Back](#))

--- (12) ---

235 ILCS. ([Back](#))

--- (13) ---

705 ILCS 405/1-1. ([Back](#))

--- (14) ---

235 ILCS. ([Back](#))

--- (15) ---

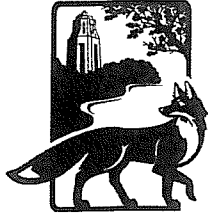
235 ILCS. ([Back](#))

--- (16) ---

235 ILCS. ([Back](#))

--- (17) ---

35 ILCS 120/1 et seq. ([Back](#))



## AGENDA ITEM EXECUTIVE SUMMARY

Title:	Discussion Regarding Citation and Notice for The Filling Station
Presenter:	Mayor Rogina

*Please check appropriate box:*

<input type="checkbox"/>	Government Operations	<input type="checkbox"/>	Government Services
<input type="checkbox"/>	Planning & Development	<input type="checkbox"/>	City Council
<input type="checkbox"/>	Public Hearing	<input checked="" type="checkbox"/>	Liquor Control Commission (9/16/13)

Estimated Cost:		Budgeted:	YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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If NO, please explain how item will be funded:

### Executive Summary:

This is a complaint of 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 Filling Station or impose a fine upon by reason of the Complaint of Violation filed by the Police Department of an occurrence on or about August 16, 2013.

### Attachments: *(please list)*

Citation and Notice of Hearing  
Complaint of Violation

### Recommendation / Suggested Action *(briefly explain):*

Discussion regarding Citation and Notice for The Filling Station.

*For office use only:*

*Agenda Item Number: 6*

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

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

IN THE MATTER OF THE LIQUOR )  
LICENSE OF: )  
 ) Case Number 2013-LC-\_\_\_\_  
THE FILLING STATION )

**CITATION AND NOTICE OF HEARING**

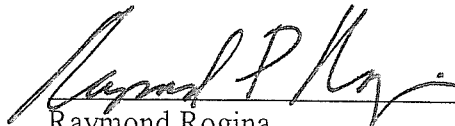
TO: THE FILLING STATION  
300 W Main Street  
St. Charles, IL 60174

**PLEASE TAKE NOTICE THAT** on September 16, 2013 at the hour of 4:30 p.m., in the City Council Chambers at the St. Charles City Hall, 2 East Main Street, City of St. Charles, Illinois, the St. Charles Local Liquor Control Commission shall conduct a hearing pursuant to Chapter 5.08 of the Municipal Code of the City of St. Charles and the Liquor Control Act of 1934, 235 ILCS 5/1-1 et seq.

The purpose of said hearing shall be to determine whether the St. Charles Local Liquor Control Commissioner, pursuant to this authority, shall revoke or suspend the local liquor license issued to you or impose a fine upon you, or both, by reason, by reason of the Complaint of Violation filed by the Chief of Police, James Lamkin, a copy of which is attached.

**AT WHICH TIME AND PLACE YOU MAY APPEAR AND DEFEND. YOU MAY BE REPRESENTED BY AN ATTORNEY IF YOU SO CHOOSE. ATTACHED HERETO IS AN ARRAIGNMENT FORM, WHICH IS INCORPORATED HEREIN. YOU MUST COMPLETE AND RETURN THE ARRAIGNMENT FORM WITH SEVEN (7) CALENDAR DAYS PRIOR TO THE HEARING. THE ARRAIGNMENT FORM SHOULD BE COMPLETED AND FILED WITH THE CITY CLERK. IF YOU FAIL TO FILE THE FORM WITHIN SEVEN (7) CALENDAR DAYS PRIOR TO THE HEARING, A PLEA OF NOT GUILTY SHALL BE ENTERED ON YOUR BEHALF BY THE CITY CLERK. IF YOU SUBSEQUENTLY ENTER A PLEA OF GUILTY OR ARE FOUND GUILTY AFTER A HEARING, THEN YOU WILL BE REQUIRED TO REIMBURSE THE CITY FOR ANY AND ALL OUT OF POCKET EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, COURT REPORTER APPEARANCE FEES AND THE COST OF HAVING POLICE OFFICERS AND WITNESSES PRESENT TO TESTIFY. ANY AND ALL QUESTIONS MUST BE DIRECTED TO THE CITY ATTORNEY, JOHN McGUIRK, AT 630/513-8700.**

DATED this 27th day of August, 2013.

  
Raymond Rogina  
Local Liquor Control Commissioner  
City of St. Charles

cc: Mark Koenen, City Administrator  
Chief of Police, James Lamkin  
STATE OF ILLINOIS )

)

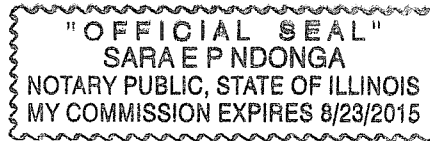
CERTIFICATE OF SERVICE

300 West Main on the 27 day of 08, 2013.

Soft Tom Shaw

SUBSCRIBED AND SWORN TO  
before me this 27<sup>th</sup> day of August, 2013

NOTARY PUBLIC





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

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

IN THE MATTER OF THE LIQUOR )  
LICENSE OF: )

Case Number 2013-LC- 01

THE FILLING STATION )  
300 W. Main Street )  
St. Charles, IL 60174 )

## COMPLAINT OF VIOLATION

**NOW COMES** the Petitioner, James Lamkin, Chief of Police of the City of St. Charles, Illinois and files this complaint before the Local Liquor Control Commission of the City of St. Charles, Illinois, and states as follows:

1. The Petitioner is the duly appointed Chief of Police of the City of St. Charles and as such is charged with the duty of enforcing the laws of the State of Illinois and the ordinances of the City of St. Charles.

2. On or about August 16, 2013 at approximately 02:03 a.m., the Licensee, The Filling Station, by and through its employees, officers and/or agents, committed the following offense in or upon the licensed premises at 300 W. Main Street, St. Charles, Illinois:

## OFFENSE

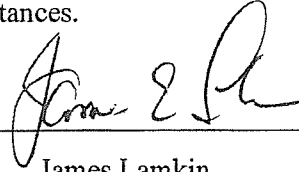
Allowed a patron to exit its premises while in possession of an alcoholic beverage.

3. On or about August 16, 2013, The Filling Station was operating under a Class B-3 liquor license issued by the City of St. Charles.

4. That the acts detailed in Section 2 of this 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.

5. That the Licensee, The Filling Station, is responsible for the acts of its employees, officers and agents and is required to ensure that no violations of state law or ordinances of the City of St. Charles take place on said premises.

WHEREFORE, the Petitioner, James Lamkin, Chief of Police requests pursuant to Section 5.08.320 of the St. Charles Municipal Code that the Local Liquor Control Commission hold a hearing on this matter and take such action against The Filling Station as the Commissioner shall deem appropriate under the circumstances.

A handwritten signature in black ink, appearing to read "James Lamkin", written over a horizontal line.

James Lamkin  
Chief of Police  
City of St. Charles, Illinois

John M. McGuirk  
Attorney for the City of St. Charles  
Hoscheit, McGuirk, McCracken  
& Cuscaden, P.C.  
1001 East Main Street, Suite G  
St. Charles, IL 60174  
630/513-8700

STATE OF ILLINOIS

)


) SS

COUNTIES OF KANE AND DU PAGE

)

## CERTIFICATION

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

  
James Lamkin, Chief of Police

SUBSCRIBED AND SWORN TO  
before me this 27 day of August, 2013.

before me this 27 day of August  
Christina Niles  
 NOTARY PUBLIC



## ARRAIGNMENT FORM

I, \_\_\_\_\_ being a licensee charged a violation of Chapter 5.08 of the Municipal Code of the City of St. Charles and the Liquor Control Act of 1934, 235 ILCS 5/1-1 et seq. at **address of license**, do hereby enter a plea of:

☐

Guilty, but request a hearing in mitigation in which I will be given an opportunity to present evidence in support of my position to minimize any penalty.

☐

Guilty, I do not request a hearing.

☐

Not Guilty. I will attend a hearing.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



# Case Report Summary



Print Date/Time: 10/08/2013 10:01  
Login ID: kschult  
Case Number: 2013-00016863

ST CHARLES POLICE DEPARTMENT  
ORI Number: IL0451400

## Case

Case Number: 2013-00016863  
Location: 300 W MAIN ST  
SAINT CHARLES, IL  
60174  
Reporting Officer ID: 0104 - Runkle

Incident Type: 7325 OTHER ORDINANCE VIOLATIONS  
Occurred From: 08/16/2013 02:03  
Occurred Thru: 08/16/2013 02:03  
Disposition:  
Disposition Date:  
Reported Date: 08/16/2013 02:03 Friday

## Offenses

No.	Group/ORI	Crime Code	Statute	Description	Counts
1	IL0451400	7325	5-08-300	OPEN ALCOHOL IN A PUBLIC PLACE	1

## Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
ARRESTEE	1	LANG, DENNIS J, JR	[REDACTED]	[REDACTED]	WHITE	MALE	23
ARRESTEE	2	GUTHRIE, ADRIANNA L			WHITE	FEMALE	22
MENTIONED BUSINESS	1	FILLING STATION	300 W MAIN ST SAINT CHARLES, IL 60174	(630)584-4414			
OTHER PERSON	1				WHITE	FEMALE	21
OTHER PERSON	2	MILLIGAN, PETER J			WHITE	MALE	50
SUSPECT/OFFENDER	1				WHITE	MALE	26

## Arrests

Arrest No.	Name	Address	Date/Time	Type	Age
17569 A	LANG, DENNIS J, JR	300 W MAIN ST SAINT CHARLES, IL 60174	08/16/2013 02:03	ON VIEW	23
17570 A	GUTHRIE, ADRIANNA L	300 W MAIN ST SAINT CHARLES, IL 60174	08/16/2013 02:03	ON VIEW	22

## Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
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## Vehicles

No.	Role	Vehicle Type	Year Make	Model	Color	License Plate	State
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# Case Report

## Summary



Print Date/Time: 10/08/2013 10:01  
Login ID: kschult  
Case Number: 2013-00016863

ST CHARLES POLICE DEPARTMENT  
ORI Number: IL0451400

OfficerID: Brunkle, Narrative

On 081613 around 0203 I was sitting on 3rd St. facing southbound near the Filling Station due to a group of subjects being a bit rowdy out back. About that time I observed a male (wearing a blue shirt, a hat, and who had piercings in his face) and a female exit the patio area of the Filling Station and began walking northbound towards my car. About that same time across the street an intoxicated subject began making loud noises so I turned to see what was going on. After seeing the subject making sexual motions and noises, I turned back to see an employee from the Filling Station chasing after the male (blue shirt) and female who seemed to hurry up or pick up their speed as she pursued them. It appeared as if they had skipped out on their bill and she was attempting to catch them.

I turned my squad around to see if the employee needed help. I pulled up next to the employee and asked what was happening. The employee told me that she believed the female had left her phone behind. I told her I would go and try to stop the subjects. I pulled onto Cedar St. from 3rd St. and observed the blue shirt male hurrying the female behind a vehicle parked on the north side of Cedar St. across from the Alibi's back door. I pulled down the street as the blue shirt wearing male began coming back towards I saw the female now with another male hiding something as they were now fast walking towards the Breadsmith. I pulled into the Breadsmith parking lot and they began walking away from my direction even faster still holding something down at their far sides away from me. As the male tried to get the female on his outside I observed glass cups being held at the female's side. I exited my squad and ordered the subjects to stop. They continued walking away so I yelled for them to stop and return to my location once more. I confirmed her to be holding two glass cups full of what was later determined to be alcoholic beverages. I could see a large glass shape bulge beneath the male subjects t-shirt as well. I told him I could clearly see the glass and asked him to pull it out of his shirt. The male did so. The male was identified as Dennis Lang Jr. Lang told me the drinks were called "Rainman". Lang told me it was basically a Long Island Ice Tea with lemonade instead of tea.

I asked Lang and the female identified as Adrianna Guthrie if the third drink belonged to the male wearing the blue shirt. They told me it did. I asked them his name and I was informed his name was I asked Lang and Guthrie whom the glasses belonged to. They both confirmed the glasses belonged to the Filling Station telling me that they had been on the patio area at the Filling Station.

I asked if the glasses had been concealed when they walked out of the patio area. Guthrie told me that she simply carried it out in her hand as no one was watching. Lang told me that he hid his in his shirt but that his cousin (unnamed) walked out with his drink in hand, and got in a cab with it prior to them walking out. Lang told me several times that no one was watching and how he watched a couple people walk out with drinks in their hands.

I asked Lang and Guthrie to walk the glasses back over to the Filling Station so I could ask what they wanted to do about their glassware being taken without consent. They agreed to walk over and once there I made contact with the owner Peter Milligan and

The situation was explained to Milligan and he argued how he had signs posted on the exit. I asked Milligan if anyone was outside watching. Milligan informed me that should have been watching. I asked Milligan if he wanted to pursue charges against Guthrie and Lang for stealing the glassware. Milligan grabbed the glasses and told me no, quickly removing them from my sight.

Lang tried to apologize to Milligan saying he would pay the fine. Milligan responded by saying my fine is going to be \$3500. Lang and Guthrie were issued ordinance citations for open alcohol in a public place. I told Milligan I would be writing a report to document the incident as well.

I did not pursue charges against as I never personally saw him with a glass of alcoholic beverage in hand. At this time this case is closed by adult arrest.

MRG311

Routing: