

**MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
TUESDAY, FEBRUARY 18 2014**

1. Opening of Meeting

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

2. Roll Call

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

Absent:

Others Present: Interim Police Chief Huffman, Russ Colby, Mark Koenen, Atty. John McGuirk, and Tina Nilles

3. Motion to accept and place on file minutes of the Liquor Control Commission meeting held on January 21, 2014

Motion by Ald. Payleitner, second by Mr. Gehm to approve minutes of the November 18, 2013 Liquor Control Commission Meeting.

Roll Call: Ayes: Payleitner, Gehm, Amenta, Lewis. Nays: None. Chrmn. Rogina did not vote as chair. **Motion carried.**

4. Discussion on consideration of a proposal for a drive through grocery/liquor store in St. Charles, IL.

Chrmn. Rogina: Russ Colby is here today from Community Development and we had a conversation. It's my understanding it sits in a PUD; therefore the concept, absence the add-on of a liquor license is why we're here today. There's no dispute of fact that he could open the doors tomorrow for the concept of the drive through grocery store and in that particular location. I commend Mr. Bogle in doing a very thorough job in laying out the outline of what his intentions are, etc. At the end of this discussion our purpose will be to take a vote to advise the Council Committee.

Mr. Peter Bogle, 902 S Randall, St. Charles: This concept goes back 30-some odd years as I grew up in the east coast and my college years in Ohio. This business concept is very prevalent out there and continues to grow. What I've notice being a parent of three and everyone being so busy that time is critical and, more importantly, in terms of the whole concept of just

convenience. I have been working on this for a couple of years and really needed the location to make it all work; so when that spot became available at Rt. 38 & Randall I got my gears going.

The concept is taking the opportunity for any individual to drive through and pick up your various grocery items whether it be dairy products or other dry goods and get in and out within 2/3 minutes at a staging area. I think this spot at that intersection is perfect in terms of visibility, ease of access whether its north/south/east/west, and more importantly just the ability to offer that ultra-service aspect to what we think is our growing community. So that, in the general sense, is what we are trying to do. We got great support. We are trying to take this business model to see if whether additional areas in Chicago and far southern suburbs as well would be interested. Being a resident of St. Charles for 20 years and having this come to fruition in St. Charles would be great.

We are proposing 15 new jobs and a way to boost some local businesses as I mentioned in my write-up; more of a specialty niche where we've been approached by 2-3 groups to have a certain night or two a week where we can offer an Italian or Mexican specialty where we start to get the general public geared to where this Wednesday night this is the special going on at the drive-through grocery store. We think that concept is a stronghold as well.

I think the concept is good; just knowing what we can do in grocery and dairy vs. offering beer and wine is why I'm here today to talk about that. That's the two products I wanted to include in the drive through – not hard alcohol – just beer and wine. What is going on in the grocery store, that's the same model we are trying to have in terms of the convenience level. If someone is looking for hard alcohol, there are enough locations they can go in and purchase those products.

Chuck Amenta: I think I've made fairly clear my thought that I am okay with the drive through liquor and I support. I've read through everything and it seems you thought everything out very well. The location is great. As you said it's in an area that does kind of struggle with retail right now and I think it would be a strong piece to put there to help build things around it. So what I've seen and read I don't have any further questions beyond that except to say that I think it's a good idea.

Ald. Lewis: Based on that comment, I have made myself clear on how I feel about drive through liquors. I did not support it the last time it came in front of this commission and I don't see where much is changed. The argument was the harried mother with the kids strapped into the back car seat, it was the elderly who couldn't get out of their cars, it's the convenience of the way people want to run their businesses this day. At Lundeen's Liquor store they also sold milk and dairy products and lotto tickets and all the same type of things; so I don't see where there's a huge difference between what they were asking for and what you're asking for – unless you can shed some light on that.

Mr. Bogle: The majority of what we got is actually split 50/50 grocery, beer and wine, water, soda. So what maybe what Lundeen's was trying to do as far your milk and cream and lotto tickets is really just a scratch in terms of what we're trying to do in driving through and picking

up a meal and making that kind of a one stop shop. That's probably the difference and us supporting some local businesses to come in.

Ald. Lewis: What do I do when another food place has meals and they come and want a beer and wine license at their drive through window so that when the family is driving through to pick up their meal they can also get their bottle of beer or wine?

Mr. Bogle: Why I like this concept is that it's unlike a window where you are looking down into the car and maybe a little harder to ID that individual. We are at ground level and the runner is actually there facing right into their eyes making sure it's a legitimate person that's being carded. I think that level of security is certainly a lot more than a drive through window.

Ald. Lewis: Are you going to go ahead with this concept even if you don't have a liquor license?

Mr. Bogle: That's a great question. Looking at the full spectrum of it, this helps round it out so that we got financial support to do the full concept as stated in the business plan. Whether I got the complete backers if we take out a pretty significant piece is a big deal.

Ald. Lewis: So you don't think it could be successful?

Mr. Bogle: I don't think we could be successful without that piece. I think that allows the truly one stop shop where someone can come through and leave with just about everything you want.

Ald. Lewis: So that's my concern that we are not really looking for a convenience store for people to get their groceries.

Mr. Bogle: Keep in mind when they are going to Jewel to do their grocery shopping that is one model vs. somebody that is visiting us on a pure convenience standpoint. We will not have that full line of complete butter, cream, cottage cheese, or four different varieties of milk. It will be more generic. You'll have your 2%, whole, and skim, but we're not going to have four different milk brands in there.

Ald. Lewis: So like most convenient stores that you walk into. Am I correct to say that St. Charles does not sell liquor in convenience stores?

Chrmn. Rogina: I'll let Mr. Colby comment on that but I think the ordinance is clear that's it's not an issue of a convenience store but an issue of square footage – correct?

Russell Colby: Yes the liquor code for the A1 class licenses limits it to establishments that are greater than 2000 square feet. The applicant in the information indicated is over that number.

Chrmn. Rogina: It doesn't say anything about a convenience store – it's the size. And to Ald. Lewis' point about sundry items vs. liquor, it seems that liquor is the driving force. In fact there's a bigger margin there than the margins on your groceries being much thinner.

Mr. Bogle: Given our size and our volume we won't be able to buy direct from a Dean's food like a Jewel would. We are now buying at a higher margin vs. the Jewel's level. As the Mayor noted, yes we can offer a product that's a really hard business model to just sustain on those items given that margin; so we really need these other things to meet our 3/5/10-year financial plan that we put into place which shows a good profit in 14 months given how we have laid it out in the business plan.

Ald. Lewis: So you basically want a drive through liquor store?

Mr. Bogle: We want a drive through grocery store that offers beer and wine.

Ald. Lewis: If my understanding is correct you will probably not move forward if you don't have the liquor license.

Mr. Bogle: The expense we are putting in for the coolers for milk, if we didn't have the beer and wine to offset that expense, our return will be somewhere around six years; that's a tough nut to swallow, so I guess if I have to give an answer it will probably be yes to your question.

Ald. Lewis: This is also in the 5th ward that I represent and I did quite a bit of research on this last fall with a lot of my constituents and to represent them fairly and my own personal opinion it's not something I'm going to be able to support.

Mr. Bogle: The only other comment I can say regarding the other proposal that came before you that I understand you were trying to retrofit into an existing building and there might have been some issues in terms of access and build-out. This structure is already set for this drive through theory and can handle that load which is a plus for our model vs. trying to retrofit something into more of a residential area vs. more of a commercial area that we're proposing.

Ald. Lewis: I don't think that was the issue to the building.

Ald. Payleitner: Russ for clarity of what you just said was that for an A1 or A2?

Russ: A1.

Ald. Payleitner: I'm looking at this and it says the primary purpose shall be the retail sale of alcoholic liquor. Is that how you would classify the primary purpose is to sell alcohol?

Chrmn. Rogina: We are certainly in the position, but Council is in position to amend as they will see fit to this model. So we don't necessarily have to use the A1 license.

Ald. Payleitner: I know but looking at A2 it talks about 10,000 square feet. I appreciate that you were thoughtful and thorough and clearly experienced with your business model – it just wasn't a pie in the sky idea. Like Ald. Lewis the last time this came before our commission I didn't support it and, simply put, I'm on the record as not seeing that St. Charles is ready to be a pioneer in this just yet as we learned in the last review there is no drive through liquor stores in

all of Kane County. Our constituency and people we talked to are not ready for us to be the cutting edge in that regard. I don't see the urgency of liquor purchases that you don't have time to get out of your car to get it. I get the milk and bread but not liquor.

Robert Gehm: Much like Chuck I kind of like the idea since that is a hard part of our City to get some economic engine of some kind. I don't know if this would be the catalyst for major growth. What would be the hours of operation?

Mr. Bogle: I have a couple of specialty coffee groups that want to offer Danish and coffee in the morning so I would say from that standpoint maybe 6:00 a.m. and I think we would go to 12:30 a.m. up to Thursdays and to 1:00 a.m. on Fridays/Saturdays. Or if there is step process with the City that I stay open only until midnight and if all things go well we extend the hours. I know the rumor in St. Charles is that nothing good really happens in St. Charles after midnight; maybe that's not the direct crowd we're trying to attract, but with that said maybe we stay open until 12:00 – 12:30 a.m. We are flexible. We are trying to work with those key small businesses in what they are trying to do.

Robert: What about proper identification? How do you secure that to make sure you are selling to people of age so that they are not zipping through when it gets really busy that people over age 21 are actually buying the beer/wine if it were offered for sale?

Mr. Bogle: At a busy time we'll have three runners such as having an initial pre-qualifier if you will out at the car so they can talk to the driver asking what they are getting and calling ahead and getting that ID info before they get inside the drive-thru area.

Robert: I just want to make sure we are ID-ing properly and making sure the right people are buying it.

Mr. Bogle: That is big area of our concern as well.

Chrmn. Rogina: I will start with the loss of Dominick's and that particular patch of businesses we have over there on the southwest corner Rt. 38 and Randall – it has taken a terrific hit and as indicated the economic activity is certainly slow. The point of St. Charles not ready to be a pioneer – if not now – when? I've talked to people in this town who like out-of-the box ideas and I've also talked to residents left and right who are always asking members of the Council when are we going to fill these empty spaces, which now includes Quick Lube on a very visible corner of our community?

In the last review with Lundeen's I talked about choice for consumers. In my opinion we are not going to say we are not going to allow businesses to grow; and the point made by Ald. Lewis that nothing here has changed much since the last conversation. I think we are comparing apples to oranges. There is a much broader scope here in terms of what is being asked for than just the drive through liquor. The conversation last time did not talk about the location. I'm talking about location. Here is an area to see retail in that particular corridor as opposed to residential. Now as I see this unfold, are we asking the question of what kind of retail is it? How many

questions will be asked? I do respect all comments that are made. I like the idea of the other restaurants that are asking that maybe they want to take some time to come in and be part of this process. The new jobs, although not a hefty number, it is still some employment. I appreciate your last comment about the flexibility of perhaps starting this process that if it were to be accepted, that you would look at phasing it in so we could monitor how it's going from 6:00 a.m. to whatever closing time. The recommendation to Council is one of two things; it's either a recommendation to deny a license for beer and wine to the drive through grocery store or a recommendation by this body to Council committee to create an ordinance to be drafted to allow beer and wine for the drive through.

Ald. Payleitner: I wanted clarity that we would change the A1 license by ordinance as well?

Chrmn. Rogina: That would be a function of the Council committee – we are strictly advisory. We'll have Council and Community Development put that together if in fact it goes to Council committee first then the Council were to say "let's go with this." We would then have to create the proper ordinance to fit.

Ald. Payleitner: There would be two; we would have to change the license because the A1 license this does not qualify.

Ald. Lewis: Could we go back to the discussion when we talked about this in the fall that if we change these ordinances, we start approving this, and then we have Jewel, Walgreens who all have liquor now wanting to sell their liquor at their drive through window. Are we now going to have this wherever there's drive through?

Chrmn. Rogina: It depends on how you want to craft the ordinance; you wouldn't necessarily have to grant that for everyone.

Ald. Lewis: Why not? How can you say its okay for one business but not another?

Chrmn. Rogina: It's clear to me that the ordinance would be strictly drafted to deal with a drive through grocery store. This is clearly a drive through concept as opposed to a window. It's conceivable the Lundeen's could come back here since the Council has never voted on this issue. This is for the Council to decide.

Ald. Lewis: With this body we've had the discussion about Walgreens and other places that are convenience stores that put themselves as your neighborhood store for convenience to run for that milk or butter and it's usually more expensive than you would find someplace else.

Chrmn. Rogina: I'll ask a rhetorical question. We have an empty store front downtown, would you consider to fill that empty store front to put "a drive through – a liquor store of a Binny's or Lundeen's variety" – would you consider putting that downtown in that empty space or a restaurant closing at midnight that sells liquor downtown St. Charles in an empty store? In my mind that is what's happening here in asking questions; whether we're pioneers or not, that's for the City Council to decide.

Ald. Lewis: I like the idea of a drive through grocery store and I hope you go through with your plans and open it up.

Chrmn. Rogina: But as he commented he needs the assistance of the alcohol piece that drives his business from the margins standpoint.

Ald. Lewis: I'm not convinced about that.

Chuck: You said the drive through would only service beer and wine? If someone would choose to park and enter the store on foot, is that an option, would they be able to purchase hard liquor that way; or would they only be able to purchase beer and wine?

Mr. Bogle: We would keep the hard liquor out altogether. There is a small office space that has its own individual door and there's a cash register there with an individual working that register; so if any individual wants to come in and make a purchase – they certainly can. We are trying to be as easy as possible to work with, so if someone wants to get out of their car, come in and go through the same process they can; unless you tell us otherwise, I suppose that's an option. That's not the point of the drive through, but there is a door.

Chrmn. Rogina: I would entertain a motion one way or the other for a recommendation to Council committee. You can motion to deny a license for beer and wine at the drive through.

Motion by Ald. Lewis, second by Mr. Gehm to deny a license for beer and wine at the drive through grocery store.

Roll Call: Ayes: Payleitner, Lewis; Nays: Gehm, Amenta, Rogina. Motion failed.

Motion by Mr. Amenta, second by Gehm that we have discussion to alter the amendment or create a new amendment to accommodate the liquor license for this proposal.

Chrmn. Rogina: A yes vote would recommend to the Council committee that the Liquor Commission has said we support creating an ordinance(s) that would accommodate beer and wine at this drive through grocery store.

Roll Call: Ayes: Gehm, Amenta, Rogina; Nays: Payleitner, Lewis.

Chrmn. Rogina: The next steps are you'll move to Council committee on March 3 to discuss this further.

5. Discuss amendments to Title 3, "Revenue and Finance", Chapter 3.42 "Alcohol Tax", Section 3.42.090 "Late payment and/or Filing; Failure to Pay and/or File" of the City Municipal Code.

Julie Herr: I am here tonight to request the Liquor Commission's direction regarding an amendment that we are proposing to the City Code regarding the City's alcohol tax. We would

like to amend the late filing penalty structure to include a flat rate. Currently the penalty structure is 5% of the alcohol tax which for someone who pays a minimal amount of alcohol tax, the penalty does not amount to much and unfortunately we have several businesses who seem to every month be on our list to follow-up to get their collections. We are looking at doing a flat rate of \$50 or 5% of the alcohol tax whichever is greater and also doing a progressive penalty structure where the second offense is \$100 or 5% whichever is greater or for the third or any subsequent offense it would be \$150 or 5% of the alcohol tax. This is provided to be incentive for people to get their alcohol tax payments in on time. Our alcohol payments are due the month following the month of the sale; so January sales are due the end of February; so they have 30 days to pay their alcohol tax and there's no reason for them to be one, two, three months behind. So we're hoping a little bit more firm penalty structure will get people to pay on time. There is a cost to the City to administer this and Kim Diehl in the Finance Department is responsible. She sends letters, emails, there's phone calls, and a lot of follow-up that is done for a minimal amount of tax. Our goal is not to collect all of these penalties. Our goal is to get people to pay on time so we don't have to spend the time following up on those businesses. So we are requesting the Liquor Commission's direction to go to committee to see this through and enforce it into our City municipal code.

Ald. Lewis: Do they pay the tax to the state and then to you and are they delinquent in their payments to the state?

Julie: No, this is our local city tax and I don't know how they are with payment to the state. This is just the 2% alcohol tax.

Chuck: What kind of excuses are you getting – are they legitimate or are they trying to kick the can down the road.

Julie: At first they do have some excuses but for some of them maybe because the dollar amount is not that great and there could be a number of different reasons. If someone has a penalty of less than \$2 and they are a couple of months late - \$2 is no big deal.

Chuck: Is this a problem you are finding with the smaller businesses or is it the larger ones as well?

Julie: It's normally the smaller establishments but there are some that routinely do this consistently and it's an easy form to fill out that is not time intensive on their part.

Ald. Payleitner: So this is to be an incentive to get it in on time so you don't have to hire someone else to get those letters out because it's getting quite consuming.

Julie: Kim wears many hats in the Finance Department and alcohol tax is one of them and we are just trying to find ways to divert her time to do other things rather than having to chase some of these people down.

Chrmn. Rogina: I'm on Kim's email mailing list and she does a bang up job in trying to monitor this and my observation is that we have the same individuals over and over again and she does an excellent job in trying to avoid Armageddon of having to assess the facts, etc. I certainly support this request to be move on to the Council committee.

Motion by Ald. Payleitner, second by Mr. Gehm recommending amendments to Title 3, "Revenue and Finance", Chapter 3.42 "Alcohol Tax", Section 3.42.090 "Late payment and/or Filing; Failure to Pay and/or File" of the City Municipal Code to go forward to City Council for approval.

Roll Call: Ayes: Gehm, Payleitner, Lewis, Amenta; Nays: None. Chrmn. Rogina did vote as Chairman. **Motion passed.**

6. Discussion regarding an Ordinance Amending Title 5 "Business Licenses and Regulations", Chapter 5.08 "Alcoholic Beverages", Sections 5.08.090 "License – Classifications", Section 5.08.100 "License Fees; Fees Established", and Section 5.08.130 "License – Hours of Sale" of the St. Charles Municipal Code.

Chrmn. Rogina: As is stated in the executive summary, I had staff put together the language that applies to an opportunity for licensees who choose a permit less than 1:00 or 2:00 a.m. to have options during the course of the year to extend their business hours up to 2:00 a.m. up to four times a year. This is going before Council tonight and would like to say the Liquor Commission has put their stamp of approval on it.

Liquor Commissions approves this unanimously – no motion taken.

7. Other Business

Chrmn. Rogina: I want to let this commission know there is a new purchaser for Thirsty Fox and he is going to do a few upgrades. Given the time of this request coming before us as a commission I didn't see the need for them to come before us. This can go directly before the Council committee to do as they please, but I do want you to vote on something that is important to me which is this individual wants to change the name of Thirsty for to Main Street Saloon. I've watch conversation in the past regarding a name of an establishment so I would like a recommendation of yea or nay to the owner so that before we go through all this process he is in a position to make some adjustments, or if you like it, we'll bring it before as is to Council committee and let them do what they want in terms of questioning.

Ald. Payleitner: Is that all we are looking at right now is the name; is there a business plan?

Chrmn. Rogina: He will have a site plan which has some minor tweaks to the place but as you know it's a tavern. He does state in the background check that his intent is to attract a different customer base. He states in the background check that he does not want to be known as a bar. His goal is to split the sales equally between food and alcohol.

Ald. Lewis: Is there anything in the liquor ordinance that says you can't use the word saloon.

Tina: Not any more it has been removed from the ordinance.

Chrmn. Rogina: This could stand and not violate the ordinance, but you're in a position to say you like it or not or take no position.

Ald. Payleitner: Saloon doesn't say more food than liquor.

Mr. Gehm: Somehow saloon on Main Street just doesn't sit well.

Mr. Amenta: I have a fundamental issue of trying to tell someone what they can and cannot name their establishment if it's not offensive and within the guidelines of the ordinance. Who are we to say we don't like the word saloon. We know what the establishment is and what all the establishments are across town regardless what they are called. To tell someone what they can or cannot name their establishment is overstepping my comfort levels.

Chrmn. Rogina: Okay the Liquor Commission takes no position at this point and will let it go before Council committee.

Ald. Lewis: If I could go back to the drive through concept, I have one more question. I'm curious how you keep the exhaust with cars inside of a building running if there is a problem with exhaust?

Mr. Bogle: The existing establishment was an automotive repair facility so the ventilation is already settled. There is fan set up and when I went before the pre-app meeting the Fire Department listen to what we are going to do in terms of a staging area for the cars and having the cars in there for 2 minutes or so was acceptable in terms of the air flow. The main thing I made note of in the write-up was we got a shade (a quick draw door) to allow a burst of air to keep coming through based on sensors so that will keep that air quality acceptable for what's in there.

8. Executive Session – None

9. Adjournment

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

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