

**MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
MONDAY, OCTOBER 20, 2014**

1. Call to Order.

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, Ald. Lewis, and Chuck Amenta

Absent:

Others Present: Mark Koenen, Atty. John McGuirk, Police Chief Keegan, Deputy Chief Huffman, and Tina Nilles

3. Motion to accept and place on file minutes of the Liquor Control Commission meeting held on September 15, 2014.

Motion by Mr. Ghem second by Ald. Payleitner to accept and place on file minutes of the Liquor Control Commission meeting held on September 15, 2014.

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

4. Consideration of a recommendation of a new Class B Liquor License for the Shakou Restaurant to be located at 312 W. Main street, St. Charles (former MaGoo's location).

Chrmn. Rogina: I'd like to emphasize to the commission that I'd like you to view this as a first reading. What we're focusing on tonight are the site plan, the business plan and the menu. The other items, the liquor license, the background check, that will all be completed in due course. Any recommendation we make to the Government Operations Committee will be pending the licensing, background check, etc. If we make a recommendation it would be assumed that those things are in order. I want the focus to be on the concept itself.

I'd like to introduce two individuals, the owner of the restaurant, Aleks Dupor and his landlord Greg Trapani. I invite both of them to the podium to talk about their concept and entertain questions. Welcome gentlemen.

Aleks Dupor: Aleks Dupor with Shakou. 204 Newberry, Libertyville, Illinois.

Greg Trapani: I'm Greg Trapani, 669 Middleton, Fontana, Wisconsin.

Aleks Dupor: Thank you very much for hearing us today and the excitement of Shakou possibly coming into your town. Shakou is a modern Japanese cuisine restaurant with sushi and other items as well.

The name Shakou stands for social life in Japanese. The concept was developed to bring a city vibe to the suburbs. Having the city feel, not having to travel to the city, keeping the price point where it is, consistent food. First and foremost it's a restaurant, not a bar, obviously there will be a bar in there and cocktails, but we really pride ourselves on the quality of the food, consistency, décor, very hip, urban cool look inside. The brand itself I'm trying to take it to the suburban towns like St. Charles. I think this town is outstanding. I love the downtown. I think this would be a great fit for your community and surrounding communities. Greg is going to be purchasing the building and we are looking to make some really nice renovations to the front facade of the building and make it a really nice looking restaurant from the outside and inside. Hopefully, we can get in here before restaurant week in February. That would be perfect timing for us to introduce our product. Again, I want thank everyone for having us here today.

Chrmn. Rogina: Mr. Trapani, you and I had a conversation briefly over the phone and I think the commission would be intrigued with your background, particularly as it relates to Arlington Heights.

Greg Trapani: I'm a developer based out of Arlington Heights. A family business for seventy years. I was talking with the Mayor today to give him a little bit about our background. If anybody is familiar with downtown Arlington Heights, myself and a partner developed about 2/3 of the theater, all the condos and retail. I have not been to St. Charles in a long time. I came out here two months ago and about fell over, you have a phenomenal community. Right away I got revved up, here I am, and I'm pretty excited. I've known Aleks for 20 years he's a great operator, I think that we have a good marriage here and with you guys it's going to be a win/win situation. I'd be happy to answer any questions.

Chrmn. Rogina: We're going to go right down the line here in a second. Aleks, I just had one final thought as far as your background. Are you opening another restaurant in Barrington?

Aleks Dupor: In Barrington as well, yes.

Chrmn. Rogina: Will this open simultaneously?

Aleks Dupor: The one in Barrington is going to be a little behind this one; this one will be first. Barrington, probably the end of June, July somewhere in there, with construction you never know, it might be a little bit longer, but that one will be right after here.

Ald. Lewis: Downtown?

Aleks Dupor: Right downtown, it's a brand new center at Rt. 59 and Lake Cook. It's going to be called Barrington Village Commons and it's right in the center right across from Village Hall.

Chrmn. Rogina: How long have you been at Libertyville?

Aleks Dupor: It has been there almost two years.

Chrmn. Rogina: I think for the record you should reflect the honor you received by Open Table, of the One-Hundred Restaurants in the country.

Aleks Dupor: We opened March of 2013 and the first six months into business we were voted as top One-Hundred Restaurants in America. It was enormous compliment based on who the restaurants were. Most of them were in Florida, Miami, New York, L.A., and then it was Libertyville, Illinois. Great feat, I was just explaining to the Mayor and Greg this morning, we got a phone call that we were voted top 3 Sushi restaurants in the state of Illinois. It was us Sunda, and Kamahatchi.

Robert Ghem: Actually, the little bit that I've read which was a lot to consume, it looks really good. Another place in downtown St. Charles that is not primarily a bar would be ideal. I think being on Main Street is tremendous. Great location, hopefully, both vehicle and foot traffic. I think it will be a great addition to our downtown area. I don't have any real detailed questions at this time.

Ald. Payleitner: I concur. I love what you're going to do to what, for lack of a better term, looks like a sore thumb in downtown St. Charles right now. This is very exciting, and I also am excited that you chose St. Charles. You're experienced; you've done it already once so we're not a guinea pig. Thank you for considering us.

Ald. Lewis: I was just wondering if you could walk me through your site plan a little bit. It's two levels from what I'm looking at in your packet?

Aleks Dupor: Referred to site plan: this is the first floor and the bottom is the second floor. I like to create a mezzanine. I'm going to cut out part of the second floor, with a beautiful glass rail, so when you come in you're going to see diners upstairs and the diners upstairs can look down into the bar area and also some seating. It gives it some elevation in the room.

Ald. Lewis: Will there be a bar upstairs also?

Aleks Dupor: A small bar. There will be a service bar upstairs for private gatherings, private parties and just to service the building.

Ald. Lewis: Okay. Then on your first level you've got tables all in front of the window?

Aleks Dupor: Yes. The back is where the patio is right now. That whole back second story, I'm going to take all that down, get rid of all of it.

Ald. Lewis: No outside seating?

Aleks Dupor: Just on the first floor, redo that, really nice. A nice garden on the first floor and take that other monstrosity up there out.

Chuck Amenta: I have to agree with my cohorts here, it's exciting to have something that's a little different and modern to change the landscape, change the look of downtown a little bit. I don't have any detailed questions. I think everything that you've provided has answered anything that I have.

Aleks Dupor: If there's anything else, our website is tremendous, there's so many articles in there, so many things that we've done over the last year and a half. Facebook we're up to ten or eleven thousand people already in a year. It's just been tremendous.

Ald. Payleitner: Hopefully, not telling tales out of home, but I think this was brought up at the last Liquor Commission meeting about that site. Parking – how is that going to be figured out? There was talk of a curb cut behind there, in regards to this building, just whatever is there?

Greg Trapani: Whatever is there that's what we're depending.

Aleks Dupor: And it's very similar to what I have now

Aldmn. Rogina: The alley is there, obviously you can walk

Aleks Dupor: And what I have in Libertyville, there's no parking. Behind our building there is an open lot and a parking garage.

Ald. Payleitner: So your used to it.

Aleks Dupor: We're used to not having an open lot to myself; it's open to everyone in downtown Libertyville.

Ald. Lewis: I see you are asking for a one o'clock permit. Do you at this point have any idea of the hours your restaurant?

Aleks Dupor: We would be open 7 days a week. We would open at eleven a.m. for lunch and dinner would be served until ten o'clock during the week, eleven o'clock on Friday and Saturday, and then there would be a late night menu from eleven to twelve-thirty serving ten to twelve signature rolls; things like that so somebody can grab something a little later in town.

Chrmn. Rogina: I think from that standpoint of getting more people downtown serving food late at night is good. We talk about that in the last meeting and now he's providing that. Just a point of order on that, I would ask Tina for other one O'clock licenses.

Tina Nilles: Los Burritos, which is way down on main street west, and Pizzeria Nero at 1st Street Plaza, Puebla Modern Mexican, 1st Street Plaza, Isacco Bar & Grill Spotted Fox Ale House way out on the east side, Tap House Grill on west side, and then ZaZa.

Ald. Lewis: I know the two o'clock licenses have a last call at 1:20 a.m. – is that voluntary on their part on the hours.

DC Huffman: I'm trying to think what's written in the ordinance. One o'clock, I don't think there's anything that specifies last call for one a.m. closing but the expectation would be the same as the two o'clock.

Ald. Lewis: Everybody would be out by one o'clock.

DC Huffman: Absolutely

Chuck Amenta: What's the capacity?

Aleks Dupor: When it's all said and done, my guess is it will be about 225 with some standing room.. The reason for the 1:00 a.m. license instead of the 12:00 midnight license is for private parties. I do a lot of groups right now in my mezzanine level in Libertyville for birthdays, receptions, a little bit of everything. It's nicer to have something a little bit later so you're not forcing anybody out.

Chrmn. Rogina: Exactly

Aleks Dupor: I think you'll see that I'm more accustomed to people, if they are there after midnight, they've been there. You're not going to see people coming in thinking that's where I'm going to go hang out right now. That's not the kind of place we are. We're more, come in for dinner at ten o'clock or nine, and they might be there, hang out with friends and they'll be leaving after midnight.

Motion by Mr. Ghem second by Ald. Payleitner for a recommendation for a Class B Liquor License for Shakou Restaurant to be presented at the Government Operations Committee meeting on November 3, 2014.

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

Chrmn. Rogina: We're off to a very good start. See you again November 3, thank you for your presentation and welcome to St. Charles.

Aleks Dupor: Thank you

Greg Trapani: We look forward to it.

5. Recommendation to approve an Ordinance Amending Title 5, “Business Licenses and Regulations,” Chapter 5.16, “Tobacco Dealers” of the St. Charles Municipal Code.

Chrmn. Rogina: Now moving into a couple of areas that we’ve been talking about for a while. Chief Keegan is here today to start us rolling on the subject of tobacco. In your packets you obviously have the details of the proposed ordinance that has been reviewed by Council. Before the Chief begins, I’d like to make one request of the committee. If we have any conversation or questions for the Chief, please refer to the specific ordinance number you’re talking about so we can immediately go to that and we know which item you’re referring to. Any questions you may have about a specific area of the proposed package you would refer to that.

Chief Keegan: Thank you Mayor Rogina and members of the Liquor Commission. What I’d like to do is make a quick note; I have something planned as a Liquor Commission item of interest. We’re bringing out Mr. Lee Roupas from the Illinois Liquor Commission for an all day, about a nine hour block, for voluntary BASSET training. I wanted to make sure that I notified all of you that it’s going to take place November 12, 2014, there are going to be two sessions from 9:00 am – 1:00 pm or 2:00 pm – 6:00 pm. We’re expecting a big turnout. Ms. Nilles has sent out correspondence on this to all 92 liquor license holders. I’ve heard some feedback already. I think it’s going to be very well attended. Mark your calendars, it’s Wednesday, November 12. Four of us from the police department are going to go through the training. Lee is going to put on the training with a test component. Pretty excited about that.

Ald. Lewis: I’m already signed up.

Chief Keegan: I’m going to do a quick overview of some of the changes regarding tobacco and then I’m going to walk through the ordinance. A couple of highlights: What we plan on doing is condensing the ordinance. Obviously there is going to be a component that is going to change the structure of the commission that you all sit on, meaning the Liquor Commission. That’s going to be talked about a little bit in our ordinance itself that we present today. Our current ordinance which is under section 5.16 is going to be condensed into section 8.34; that will talk about a number of things. We are going to introduce alternative nicotine products, commonly referred to as e-cigarettes. We’ve discussed and we will go into detail about the open air act and the use of those products in closed buildings, currently only employees for tobacco products and some of our fee structure. Lastly, I want to talk about some of the components with the licensee as opposed to the clerk. In other words, currently the way our ordinance reads is that if there is an infraction on tobacco sales only the seller or the clerk behind the counter is held accountable.

Part of the process that we want to discuss today in combining the resources of the Liquor Commission is to also have some accountability on the licensee. If you look you’ll see the tobacco ordinance that was worked on by both me and Mr. McGuirk from our legal team. I’d like to flip through it and if I come across a section you have questions on please stop me.

Under page two, one of the changes early on is the alternative nicotine products that are covered in the definition. This would be an all-encompassing code to not only sanction and govern

tobacco albeit cigarettes, cigars, smokeless tobacco, commonly referred to as chew or snuff, and of course smokeless nicotine products, that is more generally known in the industry as e-cigarettes.

Chrmn. Rogina: Chief, in Section 5.16.020, e-cigarettes are included in that particular area?

Chief Keegan: Yes.

Ald. Payleitner: Do e-cigarettes all have nicotine in them?

Chief Keegan: From my research yes. Most of the code research that I did defined them as alternative nicotine products.

Chrmn. Rogina: I think the intent at least today is as you suggested is for us to take your body of work and if we have any questions or add-ons that would be moved on to the committee so they could adjust that.

Chief Keegan: Yes sir, correct. Moving along on Section 5.16.030, I've highlighted "license", obviously we do have a license process in place currently. There are approximately 31 tobacco retailers that are licensed, give or take about five or so, that would be affected by this if we went to an alternative nicotine e-cigarette process. We would license the tobacco licensee or alternative nicotine product holder then obviously the sanctions of that license would be governed by that body.

Ald. Lewis: Do we still have vending machines around town?

Chief Keegan: It's covered in the code and I believe one of the taverns do from what I was told by some of the officers doing some of the background. Maybe Deputy Chief Huffman could comment on that.

DC Huffman: At one point a few years ago when we started doing tobacco compliance checks through state grants and we had maybe three or four vending machines, including one at Q- Center, one at Pub 222.

Ald. Lewis: Do they take ATM cards?

DC Huffman: We did provide some education in reference to the requirement to have the vending machines under direct supervision at all times and the businesses discovered that it really wasn't worth it. To my knowledge, I don't know of any current vending machines. The ones that we did address, they got rid of all of them that I know of.

Ald. Lewis: Thank you.

Ald. Payleitner: It doesn't hurt to leave it in though.

Chief Keegan: That was my thought. Page three, Section 5.16.050, in the draft that Mr. McGuirk and I worked on we left the current fee structure for licensees at fifty dollars. I did have some of my staff do some research and there were three different elements that I saw in a lot of the other communities. Most of the communities broke down a straight retail tobacco license that you would see at a 7-11 or Walgreens or a store where their primary focus wasn't tobacco sales, so counter sales. A second variation that I saw in licensing were specialty retail shops, such as e-cigarette stores or tobacco stores. In other words, an establishment that their sole focus or one of their main focuses all-be-it the moniker on the door or the sign. If it's a tobacco shop it's designated as such. The last designator that I saw in most communities was wholesaler. Really the only business here that would fall under that would be Costco, and I'm happy to say that we went back and forth during research and did a site visit and they are not selling tobacco products. The only two that we would discuss today that would have some benefit to business currently would be the retailer at phase one over-the-counter sales, and then the specialty store, all-be-it there's an establishment on Randall Road - La Vita which is a combination tobacco and coffee shop.

Ald. Payleitner: The one in Tin Cup too, tobacco.

Chief Keegan: Yes, the one in Tin Cup Pass that's a tobacco store. There's a tobacco retailer on Prairie right by the Jewel and then of course we've had a couple e-cigarette stores pop up here in the last number of months. We really have about five. There was a sixth one and we found that it's no longer in business. We have about five or so specialty retail tobacco product establishments currently. The rest are retail over-the-counter. As far as a recommendation, we pretty much left it alone. I wanted to get some input from the Commission. My recommendation from research was a fifty dollar fee on the over-the-counter retailers, the specialty stores that market tobacco products would be at one-hundred dollars. There was a larger fee for wholesalers, but as of right now we don't have a wholesaler in St. Charles.

Chrmn. Rogina: You're saying we would amend 5.16.050 in such a manner that we would increase the amount for specialty tobacco stores to one-hundred dollars.

Chief Keegan: Correct.

Chuck Amenta: Would it hurt to include the wholesaler in case there was a business that was to come in?

Chief Keegan: I thought we would in case one did open up. In my recommendation that would be two-hundred-fifty dollars for a wholesaler. To clarify what is tax laws, if you are a wholesaler, in other words a Sam's or a Costco and you're selling tobacco products to a 7-11 owner or gas station, you don't charge taxes when you are whole selling it because it's going to be charged at the retail purchase. Obviously, a wholesaler would be selling both tobacco items, cigars, smokeless tobacco, e-cigarette products and Costco does not currently sell tobacco. I would recommend to enhance that part of the code to be two-hundred-fifty dollars.

John McGuirk: I agree. So Chief, we have to create those categories?

Chief Keegan: Yes. I had sent you that in a previous edition, it's a little wordy Mr. McGuirk, so we cut it down a little bit. That would be my recommendation. It would be fifty, one-hundred, and two-hundred-fifty.

Chrmn. Rogina: So any of these changes would obviously be brought to Committee.

Chief Keegan: Correct. In the subsequent draft.

Ald. Lewis: Before you move on I've got a question on 5.16.070.

Chief Keegan: Prohibited Sales.

Ald. Lewis: Yes, to advertise alternative nicotine products these stores that are just specialty, they can't put any promotions of signs in their windows or sandwich boards saying come in and buy. Would that be correct?

Chief Keegan: So like what you see on Fifth Avenue? I would work with the Economic and Community Development Department on that. I think it would be in relation to what our ordinances say for signage as far as specifying that in the code and codifying that. I think that's for a different place in our city code; in other words, can you have an LED or flashing light? I think that kind of dovetails into general signage.

Ald. Lewis: It's under the age of 18, so I'm thinking, how can you put any sign in your window.

Ald. Payleitner: Put flyers on the high school car doors, things like that.

Chief Keegan: We can look at that but there are some signage requirements inside the establishments themselves, the pregnancy warning sign, the under eighteen or minor sign which is covered in the code that I presented today. As far as signage on the windows I would contact Community Ddevelopment and look at our existing code.

Just following along with what Mrs. Lewis brought up on page four, the first paragraph. Obviously, because we're condensing not only the tobacco code but also the alternative nicotine product into one, the minimum major requirement to purchase either of those products by state law is currently eighteen for tobacco products and alternative nicotine the state is currently silent on that. We think there is some legislation down the road but we as a home rule community would ask that we treat alternative nicotine products the same as tobacco products and use the age eighteen threshold.

Chrmn. Rogina: Does everybody seem to agree with that?

All: Yes, we do.

Chief Keegan: Page four is obviously the signage I just spoke of. Page five we did discuss keeping vending machines and locking devices that's currently covered in our code. Obviously, some of the sections that are talked about on page five are covered currently.

Chrmn. Rogina: Section 5.16.090 minimum age to sell tobacco products. I like this because I don't want to box out a sixteen or seventeen year old; in this case we don't need to worry about BASSET training as long as there is a supervisor on the premises, which it states very clearly. I would tend to support that. I was wondering if anybody here did not?

Ald. Payleitner: I was curious if that would be hard to enforce or see if they're in compliance. Unless you're doing a compliance check.

Chrmn. Rogina: That's what you do at any time with any of these things. Certainly you're right a compliance check would prove that one way or the other.

Ald. Payleitner: I was curious as to why you chose sixteen?

Chief Keegan: I'll defer to Mr. McGuirk, that's our current code.

Mr. McGuirk: That's in our current code. Why it was chosen, I think it's probably a reflection of when people start to work in these various retail establishments. So it probably was just recognition of that.

Ald. Payleitner: I've been to establishments like Walgreens where if there is a high schooler they are not allowed by company policy to sell. They have to call somebody to ring up and even unlock the cigarette case.

Chuck Amenta: Liquor has the same thing, you have to be eighteen to sell or scan it across. I think sixteen for cigarettes is ok.

Chief Keegan: I didn't stop at page 5 but that's really our current code. If there are any recommendations from the commission on changing anything we can do that.

Ald. Lewis: I'm going to be the odd man out. I'd prefer to see eighteen.

Chrmn. Rogina: Again, I think you have to put some faith and trust in the supervisors and make sure that it's made clear to them. You're right there could be some missteps somewhere along the way. I think it's important, per council's comment, that I don't want to box out possible employment for sixteen/seventeen year olds for, Junior and Seniors in high school in stores that sell tobacco products.

Ald. Lewis: I would think they would still be able to work there. There would just have to be somebody of age like they do now that comes over and sells it. I don't think it would prohibit somebody from being employed.

Chuck Amenta: It certainly could limit the possibility where if you had an eighteen year old and a sixteen year old. The sixteen year old candidate would be less attractive than the eighteen year old candidate, just by age alone.

Ald. Lewis: I guess that's just a difference of opinion.

Chief Keegan: Any other questions on page five? I realize that we didn't cover or talk about the use of these products: alternative nicotine, tobacco and the specialty store themselves. My recommendation to the commission would be that if it's one of those five or six stores that I mentioned earlier are specifically targeted tobacco or alternative nicotine establishment, whether it be La Vita or, the other ones I mentioned along Prairie or East Main Streets, or one of the e-cigarette stores, we would allow consumption of those products inside of their establishments so long as their sole source business is tobacco and or alternative nicotine. If they are co-mingled with the other sales, I'll use Walgreens for instance, we're not going to allow tobacco or nicotine consumption on premise. If it's a specialty store and/or a hookah lounge, if we were to have one of those present themselves to the city, they would be covered as an exemption to the Smoke Free Act.

Chrmn. Rogina: I could say definitively about Section 5.16.160 that absent the specialty store that you're talking about, e-cigarettes remain from public places in St. Charles.

Chief Keegan: Correct. We would treat them just the same as we would traditional tobacco products.

Chief Keegan: The 15-foot rule outside the establishment themselves.

Chrmn. Rogina: If I'm right, I think I've heard this from you, Chicago has already done this.

Chief Keegan: Correct, and we currently do allow tobacco consumption or use at La Vita and I believe that's the only area in the city where that's currently taking place. That is in the rule; the establishment is a cigar lounge. We would encompass places or establishments such as those in the code. I presented that to Mr. McGuirk and we'll get there for the next committee meeting.

Ald. Payleitner: The wording of this implies that state act covers everything. We're just adding to that the e-cigarettes piece?

Chief Keegan: Correct. The state does not cover e-cigarettes. We'll encompass the exemptions and the tobacco product specialty stores.

Ald. Lewis: Could you tell me a little bit of what the difference would be between an e-cigarette store and a hookah lounge?

Chief Keegan: Hookah lounge would be probably more along the lines of what we see out at

La Vita. In other words, you're coming there to socialize and gather with friends, whereas maybe an e-cigarette lounge would be more of a retail component, you would have some testing and some product sampling on-site.

Ald. Lewis: Would these lounges want a liquor license?

Chief Keegan: Not necessarily. We haven't experienced that in St. Charles, but other communities have. They run the whole gambit. Some are based on the flavored nicotine and tobacco products and other offer components, such as food, drink. I myself haven't visited them, I've read about them. I think it all relates to the individual business plan of the proprietor.

Ald. Payleitner: Don't forget BYOB.

Chrmn. Rogina: Exactly right, don't forget the BYOB element. A shop like this could open and say a BYOB?

Ald. Payleitner: Would we want to consider then maybe having this exception to smoking or vaping if they are selling the product.

Chief Keegan: I think that's our intent.

John McGuirk: I think that when we get a definition of the specialty store it's going to say that you can use the product on that premises if it's substantially tobacco sales.

Chief Keegan: Common sense approach is, and I use the moniker example on the door or the placard outside the business, if their target audience is tobacco or alternative nicotine use, in our minds eye we'll write the code accordingly to make sure that we allow for some product sampling or some socialization to take place but not in a Walgreens type of establishment.

On the penalty, I know there might have been a little bit of confusion when you read through this on the rough draft. We talk about penalty which is the seller under Section 5.16.170. If we are conducting a compliance check and our officers pursuant to their duties and responsibilities come across an unlawful sale of either of these items to someone under the age of eighteen, the fines listed there is what will follow the seller themselves when they're sited.

Under the next section which is 5.16.180 that's the licensee. You'll see a fine structure change. Under 170 the seller will face an ordinance fine comprised of one-hundred to five-hundred dollars. Under 180 comprising tobacco and alternative nicotine products, the Liquor Commission will obviously give us some teeth and a bite if there are unlawful sales going on. If we have three clerks over a period time all selling these types of products unlawfully to minors, obviously right now there's not a due process of a hearing for a violation for the licensee. Under this format and structure there will be and that's the accompanying fines they talk about from two-hundred-fifty dollars up to one-thousand dollars. There is also the provision in the code that allows for up to a seven-day suspension.

Chrmn. Rogina: I want to say right away, I give legal counsel, you Chief and your staff credit for this. I think this is good that the seller, himself or herself, perhaps making minimum wage or whatever the case would be; I still think there should be some teeth in that; it was twenty-five dollars before, so this here I think is reasonable, but then we would move to due process section and I was wondering about that and you explained it clearly. Put teeth in the owner.

Chief Keegan: Correct. Obviously we take tobacco sales and alternative nicotine product sales seriously and we do compliance checks randomly throughout the city. A lot of time this is funded by grant money from the state; this is something we're looking forward to having as another tool, if you will, to make sure that people are dotting their I's and crossing their T's on who they sell to and who they don't sell to.

Chrmn. Rogina: If I could go to legal counsel? Due process and the hearing with this group, if City council eventually passes this ordinance, it would be similar to a liquor violation. Somebody would be sited and they would decide to plead guilty or not guilty.

John McGuirk: Essentially what we did, and this is used by a number of municipalities, we create a Tobacco Commission and Commissioner, which is the same thing as the Liquor Commission. We basically would have a notice of violation, you would notify them of an opportunity to come before this group to talk about the incident. Ultimately, you would make a recommendation to the Tobacco Commissioner as to what type of sanction to present.

Chrmn. Rogina: Assuming they plead guilty right at the beginning. Otherwise, they ask for a hearing and we've gone through that already. It would work the same way.

John McGuirk: Exactly.

Chrmn. Rogina: Then there would be court costs involved in that too.

Chief Keegan: Mayor, I misspoke. The seven days that I speak of, I want to make sure I'm clear on that for the record. The seven days is under paragraph C 5.16.180 just so we're all on the same sheet of music. No license issued under this article should be suspended or revoked or be fined unless there is a public hearing within seven days of written notice. As far as the amount of suspension, Mr. McGuirk could comment on that. If we file paperwork accordingly a licensee will have to do a hearing within seven days. Similar to what we're doing now.

Chrmn. Rogina: We have Liquor Commission once a month. Is the Liquor Ordinance not phrased that way that they have to come before this body within seven days of the citation? We only meet the third Monday of the month. The first of the month somebody sells to a minor, a pack of cigarettes; would we have to hold a special meeting?

John McGuirk: Maybe it should be thirty days.

Chrmn. Rogina: I think that covers the whole month and then we're in good shape.

Chief Keegan: Good catch Mayor. We probably should extend that.

Chief Keegan: Once we take the commentary from today we'll make sure we present it the correct at the committee meeting.

Robert Ghem: I think we interpret it to say that we have to give them notice seven days in advance of our monthly meeting. Let's look at what the Liquor Commission says.

Chrmn. Rogina: That's a good point by Bob. It should probably mirror the Liquor Commission.

Chief Keegan: OK. That concludes my comments. Is there any other feedback or questions of me that I can take back to Mr. McGuirk and make sure I come on board with a more refined ordinance?

Chrmn. Rogina: Let's go down the line. Bob any final questions?

Robert Ghem: Nothing, no. Rita?

Ald. Payleitner: No, clarification was given as we went.

Ald. Lewis: I think it's great, accept I would probably push for eighteen. I think the goal with cigarettes is even though it's legal, we really don't want people smoking because of health reasons. I think it's a little confusing that a sixteen year old could work in this store that sells nothing but these products, but yet they're not allowed to smoke.

Chrmn. Rogina: Well let me be a devil's advocate. In this package it talks about the fact that there's an exemption for a child smoking at home, if a parent allows it.

Ald. Lewis: I'm not going to go over that.

Chrmn. Rogina: My point being, how far do you want the long arm of the government to stretch? Given the fact that tobacco, it stated in our ordinance that's it's unhealthy, but it's legal to sell. That's the balance we try to find between your point, which is very well taken, and then the legality of the matter, trying to find some bridge in the middle.

Ald. Lewis: That's an interesting question, because if there are parents that are serving alcohol to under age children in their house, their sited aren't they?

Chrmn. Rogina: Yes

Ald. Lewis: But we obviously don't do that with cigarettes. If you walk into a party and there's several kids smoking that are sixteen nothing happens to anybody.

Chief Keegan: We try to have some discretion and work within the parameters of the statutes and our ordinances. Given your concern, Mrs. Lewis, I'll do some more research and work with Atty. McGuirk to look at some ordinances from other municipalities. I'll confer with the Liquor Commission from the state and I'll come back at the committee level with a more refined recommendation.

Ald. Lewis: Thank you.

Robert Ghem: Would we not run into a situation where we look at having to raise the liquor selling age to twenty-one from eighteen then? Would there be some parallel to that? Is that something that we need to consider or want to consider?

Charles Amenta: Somebody could speak to that point. I can be eighteen and sell liquor.

Robert Ghem: But can't consume it.

Charles Amenta: Right, I can't consume it, but I can sell it.

Robert Ghem: In St. Charles it's twenty-one? Is the state of IL eighteen to serve?

Robert Ghem: To serve it's eighteen?

Ald. Lewis: It's sixteen.

Chief Keegan: As part of this whole process we're taking a good hard look at our entire code so I think we're going to bring some recommendations forward. I will make sure under Ald. Lewis' concern, I'll look at case law, I'll talk to the Illinois Liquor Commission, and confer with Atty. McGuirk and get a refined recommendation for you.

Ald. Lewis: I think that's the best we can do thanks.

Chrmn. Rogina: My final comment is thank you for a job well done, not only to legal counsel, but to you and the staff as well. I think we need to have a recommendation simply to move this forward to Council Committee with all of our input. Then as the Chief said, we're not going to bring it back here again, let the Committee digest all this stuff based upon our input.

Motion by Mr. Gehm, second by Mr. Amenta to recommend an Ordinance Amending Title 5, "Business Licenses and Regulations," Chapter 5.16 "Tobacco Dealers" of the St. Charles Municipal Code go before Council Committee for recommendation of approval.

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

6. Recommendation to approve an Ordinance Amending Title 5, “Business Licenses and Regulations, “Chapter 5.20, “Massage Establishments” of the St. Charles Municipal Code.

Deputy Chief Huffman: We’ve been working with legal counsel, Mr. McGuirk, in developing language for Massage Establishment Licensing ordinance. We’ve presented to you a draft of that work, under proposed City Code 5.20. What I’d like to do is hit some highlights, page by page. Certainly, if you have any questions please feel free to interrupt me and I’ll answer if I can.

What we did was try to put in some definitions. Some of the definitions I’d like to highlight to you, is the definition of a Massage Therapist. Most important is that it requires for somebody to be considered as a massage therapist they be an active member in a professional massage therapy organization who require minimum standards for graduation from a recognized massage school, or graduation and completion of a professional level entry program which consists of five hundred hours in classroom study and one hundred or more hours of clinical experience, or evidence of a professional license issued by the State of Illinois as a massage therapist. This becomes important as we get in further to the ordinance and what is required for a business license.

Ald. Payleitner: Is this definition of massage therapist, is that an industry definition?

DC Huffman: Mr. McGuirk and I put this ordinance together based on other ordinances from various communities. All of these definitions I would say would be industry standards coming from those ordinances.

Ald. Payleitner: I know in the medical profession, therapist, that’s pretty specific. There are different layers and the fact that you can have A and B without a license, I wonder if that minimalizes. If that’s the standard for the industry, that’s fine.

John McGuirk: It’s often sighted in some of these ordinances although, you’re right, there are some ordinances that simply say to be a massage therapist you have to be licensed as a massage therapist, which is another way to approach it.

Chrmn. Rogina: I have a question and I think this captures the essence of the big issue here that you articulated very well at one of our last sessions and also at the retreat. We’re not here to throw a lot of road blocks at our current massage therapists, our hospitals, X-Sports, or places that have massage therapy and follow this rule. We have an exemption section here. It seems like we’re really trying to get licensing for those, I hate to use the word, hit or miss, fly by night operations that come into our community, without much or any substance of this nature. Would I be correct on that?

DC Huffman: Yes.

Chrm. Rogina: Therefore, you get to the exemptions section. I don't think too many people who conduct legitimate, honorable, massage therapy businesses in our community have to worry about licensing or fees associated with the fines.

DC Huffman: That's correct.

DC Huffman: Is there any questions on page two before we move on? On the next page Section 5.20.020 Massage Business License Required, no person shall engage in massage as a business of massage, or otherwise provide a massage in return for compensation without having first been licensed by the City of St. Charles. It goes on to state that for any business which a license has been issued, it's a requirement that a massage therapist be employed, that the massages are being given by what we define as a massage therapist. Moving back to the initial definition of a massage therapist, the requirements, graduation from school, state license, etc. Before I get into exemptions, any questions?

Ald. Payleitner: . Outcall massage service. There are legit massage therapists who go to people's houses. They don't need a license.

DC Huffman: I think I understand your question. For outcall massages that take place at patron's residence that would then be licensing individual massage therapists which we can't do. The state does that.

Ald. Payleitner: Got it, that's clarifying. Thank you.

Ald. Lewis: Could those individuals register their state license with us? We couldn't license them, but could we ask to have their state license registered.

DC Huffman: I don't know. I would refer to Mr. McGuirk.

John McGuirk: I don't know the answer to that. We'd have to research that. I haven't looked at that issue.

Ald. Payleitner: That falls in a similar category when you go to a hotel with a wedding and a cosmetologists come in and does your hair and nails. It's not a licensed establishment.

DC Huffman: Certainly. Under exemptions 5.20.040, first thing I'd like to do is strike section A, subsection C. Mr. McGuirk discussed that and will be taking that particular paragraph out. The exemptions that we have and you can see they include physicians, surgeons, everything there that we just spoke about, athletic trainers, nurses, including cosmetologists, things of that nature. The exemption list is pretty inclusive.

Ald. Lewis: Are nail techs the same as cosmetologist?

Ald. Payleitner: They have to have a cosmetology license.

Ald. Lewis: OK, they fall under that same category.

DC Huffman: There's also exemptions for persons who give massage, back and shoulder massages in massage chairs and the people are fully clothed. There's exemptions for that too.

Ald. Lewis: If I can go back. It says the neck, back, face, scalp, hair and hands. In a pedicure there's also the feet and the legs.

Chrmn. Rogina: Correct. In fact I cut a ribbon the other day at a place that has a pedicure stand.

Ald. Lewis: Probably have to add those too.

DC Huffman: Yes, thank you. Next we move into 5.20.050, application for Massage Business License. This is where we get into the application procedures and requirements. This is very similar to liquor license applications. Through the application process, just like liquor licensing, there will be a background investigation conducted by detectives at the Police Department. Very similar to what we do for liquor. Do you have any questions on the application for massage? I don't want to go through it line by line, it basically mirrors the liquor code.

Under Terms of License, 5.20.060, we structured the license term just like the liquor code to begin May 1 and end April 30. As far as license fees what we recommend is a five-hundred dollar license fee, plus a \$50 finger print fee. The \$500 licensing fee is based on the estimated staff hours that the Police Department and the Code Enforcement offices would need to put into processing the application. We do estimate approximately ten hours and therefore put the licensing fee at \$500. We felt that to be reasonable. If not, this is our first attempt at licensing massage establishments and if we find down the road that five-hundred dollars is not adequate we can certainly adjust that. The \$50 fingerprint fee is basically our cost to through the Bureau of Identification of the State of Illinois to conduct fingerprint process.

Chrmn. Rogina: Any comment or is the consensus on support of the recommendation by staff?

All: Yes

Chrmn. Rogina: Let's go with that for the time being.

DC Huffman: Next we get into a number of sanitation and safety requirements; we write in the code that the premises should be periodically inspected by the building commissioner or authorized representative. These requirements are necessary to make sure they are running a clean establishment.

Moving on to the next page, page 7, Section 5.20.080, Issuance and Denial of Licenses. Again, this is set up just like liquor licensing and some similar language to the tobacco licensing that Chief Keegan just presented to you. The local Liquor Control Commissioner acts to approve or deny applications for license under this section. The Building Commissioner before any

licensing takes effect would be inspecting the premises to make sure that all the code requirements are met. The local Liquor Control Commissioner with the advice and consent of City Council shall either issue a license or notify the applicant that the license has been denied. Also, the denial of licenses, it's important to point out, if the proprietor is convicted of a felony under the eyes of the state of Illinois or any other state, or under the Federal Laws of the United States within five years of the day of the application, they cannot get a license. If they have ever been convicted of a sex offense as defined in our State Code or any equivalent law of any State they cannot get a license if they are convicted of a violation of any provision of this chapter and try to apply for a new license.

Chrmn. Rogina: Under all of this application and issuance of license and given a few of the instances we have had here in the community, perhaps the reason why we triggered some of this. I'd be curious what might be the process or what would be the thinking of the Police Department as too going out to establishments that we reasonable believe do not meet the requirement of the exemptions and therefore would there be a pro-rata license demand? What is your thinking as we walk our way through this?

DC Huffman: We would prepare for the upcoming May 1st target and meet with the businesses. Once codified there is going to be some leg work for the Police Department and the Detectives. We're going to be meeting with the businesses to determine if they're exempt or they need to apply for a license and we'll help them through that process and educate them on what it is.

Chrmn. Rogina: Sounds good. Sounds fair. Thank you.

DC Huffman: Still on page eight under Section 5.20.110, Conditions and Restrictions of Licenses. We put some things in place, such as, sanitary conditions, requirement that they post price rates, and employee dress code, all in an effort to make sure that the business is running legitimately. You'll notice on the next page, page nine, under G. Minors Prohibited – they cannot employ anyone under the age of eighteen either as an employee or as a masseur. Alcoholic beverages are prohibited. The hours of operation that we've proposed are they cannot be open between 10:00 p.m. and 6:00 a.m. Last under this section, inspections, the Liquor Control Commissioner can authorize us to make inspections, both code enforcement and Police Department. It's actually violations of their license to deny us entry if we are assigned to do an inspection.

Chrmn. Rogina: The hours of operation raises a question. If you're exempt can you still be open 10:00 p.m. – 6:00 a.m.?

DC Huffman: If you're exempt and not required to be licensed the hours of operations wouldn't apply.

Ald. Lewis: I haven't heard the word reflexology used at all, which sometimes is a different service than massage. It's just your feet, they do reflexology.

Ald. Lewis: Would that be a loop-hole that someone could just open up reflexology business and not have to adhere to any of this?

John McGuirk: My knowledge of reflexology is a little bit limited. We can check into that. I know the Wheaton ordinance talks about Asian body, there are other disciplines that have subtle distinctions and that may be one. I really don't know. We kind of stayed with this one definition of massage.

Ald. Lewis: OK

DC Huffman: Yes, we can look into that. Any other questions before I move on?

On page ten under Section 5.20.150, we've outlined the due process just like the liquor code. After you're discussion with Chief Keegan, we will also take a look at C., the seven-day written notice and we'll make sure to mirror the language in the liquor code. Just like liquor licensing, after due process, a license may be revoked or suspended or fines may be imposed. As we get to page twelve, the penalties for violations; not less than \$500, no more than \$1,500 for each offence. That's in addition to a revocation or suspension of a license.

Chrmn. Rogina: Questions for Deputy Chief?

Ald. Payleitner: Just so you know where I was coming from, when I was talking about the industry standard on defining Massage Therapists, I was looking not so much for clarification, but for a consumer protection thing.

DC Huffman: Thank you.

Chuck Amenta: We have talked originally when you brought up the idea of the commission including this, that most people who receive violations don't ever appear for their hearing. Is there an opportunity to put in there if they fail to appear or pay their fines that their license would then be permanently revoked and not able to be reinstated.

DC Huffman: A failure to pay fines can result in revocation of a license and that's written in the code. As far as it being permanent, there is an appeal process through the Illinois Law Review Statute.

John McGuirk: The Administrative Review Act is where the State Liquor Commission doesn't regulate massage, obviously there is no avenue there. I don't know about tobacco, they do have an arm that regulates tobacco as well, but I don't think there is an appeal process. Most things under our system, you have a right under the Administrative Review Act to go to court. That's very seldom done.

Chrmn. Rogina: So in theory, if someone doesn't like a decision here on tobacco or massage they can end up on the Circuit Court.

John McGuirk: An action in court to ask for an Administrative Review.

Tina Nilles: I just have a question from an administrative point of view. Currently we don't have a license application that exists for massage establishments; will we revise something, create one?

DC Huffman: We'll work together to create one.

Tina Nilles: The same with cigarette licenses, tobacco – current application is very vague.

DC Huffman: I anticipate that the applications will be mirrored after the liquor licensing.

Chrmn. Rogina: Any further questions? Otherwise, just like the last one, kudos to you Chief and the whole staff for a job well done. With that, again, because this will go now on to Committee, I would entertain a motion with all of our input, etc. to move for a recommendation to Committee for the Ordinance amending Title 5, Business Licenses and Regulations, Chapter 5.20 Massage Establishments.

Ald. Lewis: I was just going to say, I think you've all done a great job and I guess I just want to make clear our purpose is to keep our good established business to maintain legitimacy.

Chrmn. Rogina: Absolutely.

DC Huffman: We've spoken with businesses not only in town, but nationally, such as the American Massage Therapy Association, they have all been in support of a licensing process whether they're exempt or not because it legitimizes their own profession.

Chrmn. Rogina: And I think the press has quoted us very well on that point, saying that we do want to protect the integrity of our good massage therapists in our community vis-a-vis the ones who denigrate the profession. That's what I think the focus is here.

Motion by Ald. Payleitner, second by Mr. Gehm to recommend an Ordinance Amending Title 5, "Business Licenses and Regulations, "Chapter 5.20, "Massage Establishments" of the St. Charles Municipal Code to go before Council Committee for recommendation.

Roll Call: Ayes: Gehm, Payleitner, Lewis, Amenta; Nays: None. Chrmn. Rogina did not vote at Chairman. Motion carried.

7. Other Business

8. Executive Session (5 ILCS 120/2 (c)(4)).

9. Adjournment

Motion to adjourn by Ald. Payleitner, second by Lewis to adjourn meeting at 5:45 p.m.

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

Motion carried.