

**MINUTES
CITY OF ST. CHARLES, IL
LIQUOR CONTROL COMMISSION MEETING
TUESDAY, JANUARY 20, 2015**

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 December 15, 2014.

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

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

4. Discussion of proposed code revisions for Title 5 “Business Licenses and Regulations,” Chapter 5.08 “Alcoholic Beverages” to go before committee for recommendation to City Council.

Chrmn. Rogina: This is an update from what we talked about extensively last month dealing with two different items; the first one being discussion of the proposed code revisions for Title 5 “Business Licenses and Regulations,” Chapter 5.08 “Alcoholic Beverages” to go before committee for recommendation to City Council.

Chief Keegan: Tonight’s efforts are a fast forward from the December 15 meeting where we did a working document and went through the entire liquor code and had good, frank discussion. We took that discussion and met with our city attorney, Mr. McGuirk, Deputy Chief Huffman and myself went through and codified and formatted the discussion and some of the proposed changes that is before you tonight. This is as completed as can be with the exception of the E5 piece that involves the Fox River Harley Davidson (page 13). There is a PUD document that is in effect from 2005 when the dealership was built and there was conflicting language from that

document executed in 2005 and our current E5 liquor code as far as the number of dates and events that facility Harley Davidson is allowed to hold each year. Because there are these two outstanding documents, we are in the process of working with the legal team of Fox River Harley and the City. We are going to do this off-line before it goes to the next step of committee in February. We have some proposed language, but the PUD back in 2005 indicates four separate events being allowed for no more than two days in duration – really no more than eight days are allowed for special event licensing. The current E5 language in our liquor code today says 20 days. This is strictly in a discussion phase right now. We have to amend the PUD along with the language in front of you.

Ald. Payleitner: From our notes of the last discussion, is this go ahead with Harley's understanding and filling their needs of 14 days.

Chief Keegan: We need some further discussion on that and will bring our city attorney and Harley's attorney together because there is the outstanding PUD that needs to get amended or reviewed.

Ald. Payleitner: In that vein, on page 32 there is reference to the 1st Street TIF in the description. Will we, down the road, need to do that as well?

Atty. McGuirk: We need to look at that description and see what it is referring to. I think it might be the plaza area, but will have to verify that.

Chrmn. Rogina: The good that has come out of this is we have conflicting language with the PUD and we're trying to shore up our ordinance, we are taking it slow until it gets done correctly and they'll synchronize themselves one way or the other. We want to make sure we work with Harley because they have been model citizens.

So as we move the package forward, E5 will be moved along as they discuss things and will be finalize at some point – it won't come back here.

Chief Keegan: When it was first built, it was Zylstra and now it's Fox River Harley Davidson with an additional dealership present inside of Fox River which is Triumph Motorcycles. So we have a couple of different ownership groups and we want to make sure we do that with legal counsel and do the best we can to get some level ground there.

The rest of the document, both DC Huffman and I are here to answer any questions. Last time we went through it section by section; so if there are any outstanding questions, we've highlighted the changes this time and can answer any questions you might have.

Chrmn. Rogina: If anyone has a question, please indicate the page you are referring to.

Ald. Lewis: Page 14-16 BYOB – My biggest concern is with F2 “Beer, Wine, and “Spirits”. I am okay with F1 “Beer and Wine”; but Beer, Wine, and Spirits into a commercial business of

public accommodation in which social interaction takes place, that's a wide open description of places?

Chief Keegan: In the broad sense yes, but if you look at some of the restrictions in place, if you read the section further on it talks about hours of operation – we are going to treat BYOB places just like packaged liquor stores to close at 10:00 p.m. every day. Right now the state and the city are silent on BYOB, so currently there is BYOB taking place in the City of St. Charles without the sanction of some of the things we've codified, such as, Dram shop insurance and packaging we are requiring for folks leaving the establishment.

Ald. Lewis: Okay they'll have Dram shop insurance, will they have someone 21 years or older in order to serve?

Chief Keegan: Yes, BASSET trained, 21 to oversee the consumption on sight. Right now since we have no sanctions on BYOB; right now in St. Charles you could come into an establishment and consume alcohol meaning beer, wine, or spirits. We are putting provisions in place on BASSET, Dram shop, age restrictions, and packaging of alcohol leaving the establishment.

Chrmn. Rogina: That raises an interesting point, if we stood silent on this matter, would we not be back to where we are today that anybody could allow for beer, wine or hard liquor in their establishment under a silence by the City and state?

Chief Keegan: Yes.

Ald. Lewis: I spoke to this a month ago and I'll speak to it again. I am opposed to hard liquor being in this ordinance as a BYOB. I'm not going to be able support that portion of it. I think it's very broad with this social club where social interaction is going to take place. It will be a very broad scope of businesses that it can open and I'm not supportive of that.

Chuck Amenta: They'll still have to come before committee to get a license approved? It's not like they'll just open and do it. I understand what you're saying that it opens up opportunity for a lot more businesses to come into play but they all will still have to seek approval.

Ald. Lewis: To get this clear, some of the Chinese restaurants that are already in business, will not be able to let anyone bring in beer or wine unless we give them a license. If we say no then they can't do that.

Chief Keegan: Correct because we are codifying and regulating BYOB moving forward. Currently we don't have a say so or stance on this. You talked about not wanting the spirits. What we looked at is what is in practice now and has been in practice for a number of years prior to this; so when we looked at ordinances and tried to codified some regulations moving forward, we didn't want to penalized or restrict things that were already in place. We want to have some sanctions to make sure there are some best practices in place. We do have an establishment that for many years has had spirits consumed on sight, so when we crafted some of this language we wanted to make sure we weren't restricting what was already in place.

Ald. Lewis: Can you put a limit of one on this. It's my understanding that this F2 is only for one business that's in place now.

Chief Keegan: Based on the hours we talked about and some of the restrictions that are outlined, and it is going to have to go in front of the commission, meaning you folks, on approval moving forward; so if an additional site came forward, say next year or after, and wanted to open up something under our ordinance language, you as a commission, would have the initial purview of that. Given the restrictions we have in place and having talked about this, I feel good about it and even furthermore our efforts were not to go back and restrict or penalize folks who have been doing this for X number of years in the City. We just want to strengthen our ordinances and protect not only us but the proprietor too.

Ald. Lewis: It's probably no different than somebody sitting at home and drinking their bottle of spirits and then going out at 10:00 at night because that's when people usually start hitting the downtown bars. I'm just not going to be able to support a business downtown that you can bring a bottle in and then at 10:00 leave and go to the bars.

Ald. Payleitner: While I see Ald. Lewis' point, I like the language because it enhances the protection of the business and clientele, which is what we are trying to do, because right now we've got nothing. At the same time it's not prohibitive to an existing business. There has not been any issues.

Ald. Lewis: How would you know if there were issues if someone was over served at this business?

Chief Keegan: It would be through calls for service and police activity and in our review of responses, we didn't see a history or any evidence of that. We are allowing them one bottle brought in. That bottle has to be stored in a locker facility and if it is carried away from the establishment, it has to be secured in the tampered proof bag. So only one is allowed to be walked in and as far as walking out, it has to stay on sight of the social club secured in a locker or if it leaves it has to be sealed.

Chuck: For clarification with the BASSET training for the over 21 person on staff, would they have the same responsibility as any of the local pubs downtown or anywhere in town when someone comes in and leaves the premises after consuming alcohol.

Chief Keegan: Correct and that person(s) would be held responsible as the licensee if there were infractions or violations. Currently there are no restrictions. If it's a BYOB facility and it's licensed, if there is underage consumption on site, over service on sight, violation of liquor or things coming/going that are not codified or regulated by ordinance, that proprietor and the agent would be held responsible. Currently that is not the case.

Chuck: So there would be very little difference in purchasing the alcohol from the establishment?

Chief Keegan: Correct.

Ald. Lewis: Is there entertainment involved in an F2 in a social club?

Deputy Chief Huffman: The F licensing refers back to other sections in the code and under this new language, entertainment is allowed for B and C license holders. I don't see any restrictions on live entertainment that was put in here.

Ald. Lewis: Maybe we could have some sort of entertainment restriction? I don't want to see entertainment in a social club license.

Chief Keegan: Okay.

Chrmn. Rogina: That is your request and we are moving this forward to committee where you will have chance to comment there. Chief can bring this to the attention of the committee at that time. For purpose of moving this along to committee, the record reflects your comment, can I formally say you descent to the F2 license and we can move forward?

Ald. Lewis: Yes, I'm fine with that.

Chrmn. Rogina: Is there anything else in this packet that anyone wants to comment on?

Ald. Payleitner: Clarification on page 32 where it says "any person violating this section shall be fined." We didn't have fines set before?

DC Huffman: You are looking under "sale, delivery, consumption, possession"?

Ald. Payleitner: Yes, this is just an example. We didn't have any fines set on any of these before – correct?

DC Huffman: Yes, we did and the fines are now higher.

Chief Keegan: All of our alcohol related offenses will be talked about in the next section and has a minimum fine and some language if there are subsequent violations of the same offender or violator that there will be stricter fines moving forward.

Ald. Lewis: Regarding talking about carryout and an open bottle of carryout; I read somewhere you can purchase a bottle of wine and carry it out – have you been able to do that all along or is this something new – page 10.

DC Huffman: Previously no, our code didn't say you could or couldn't, but we are mirroring the state law of the Illinois Liquor code and that is their exact language we put into our ordinance to allow for that.

Ald. Lewis: How does that factor in with drive-through liquor stores. If that was to come before us again?

DC Keegan: This relates to the B and C licensing with a sit down meal service. There are restrictions in here about partially consumed bottles of wine. This is for a B license that allows for the package sale of wine not for consumption.

Ald. Lewis: Yes, that's what I'm talking about where you order your food to go, come in and pick it up, buy the bottle of wine, and walk out.

Tina: That is for Francesca's and Pizzeria Neo. We had this in the code prior to all of these revisions. These were a B6 classification but are now being revised to a B2 license. Acquaviva was granted a change of the liquor license from an A5 to a C license so that he could serve martinis and wine and a customer could buy and leave the premises with an unopened bottle of wine.

Ald. Lewis: But this will now apply to any restaurant that you can purchase food and a bottle of wine off the menu.

Chief Keegan: I would like to say that with the tamper proof, transparent bag, that rather to encourage a person to consume the entire bottle, if the bottle is not entirely consumed at the meal and as long as the bag is sealed and you purchase a meal...

Ald. Lewis: Yes, I know but I'm not eating anything in your store. I'm just coming in and picking up my order. My intent is not to stay there – it's to go and I don't have to stop at the liquor store to buy a bottle, I can just get one at the restaurant. Is that the state's language?

DC Huffman: No that is not the state language. The state language refers to the partially consumed bottle with meal service. C3 has been in the code prior to these revisions. That language is the bottles of wine is for retail sale in their original packages and cannot be consumed on the premise.

Ald. Payleitner: Number of license on page 19 – why is this area highlighted?

Chief Keegan: We had a chart similar to what is on page 18 and we had each number of licenses broken down based on how many were active and issued. This is cleaner, instead of revisiting our liquor code each time we have an establishment open or close, we've simplify things to say that in no way shape or form will we allow more licenses than are issued by the commission. So to get a liquor license you have to come before this board which needs a background and vetting process.

Ald. Lewis: I would like to talk about the D licenses on page 11. Explain to me how this D3 license is going to work.

DC Huffman: The Park District approached us with a request for their golfers to be allowed to consume alcohol on the golf course. In looking at our license and trying to research what they were requesting, we discovered that the only golf course within our jurisdiction that is allowed to serve alcohol on the golf course, have a halfway house and cart service was Pheasant Run under their specific license. That language refers to Pheasant Run as being a hotel resort. I talked with the Park District, St. Charles Country Club, and Royal Fox Country Club and discovered that those two country clubs for years have been serving cart service and halfway house on their golf courses thinking that was part of their license. We thought it was part of their license as well. So it wasn't a malicious violation on their part. So in looking at the language, we discovered we need to address that issue. The Park District did a lot of research for me. It is an industry standard for golf courses to have this type of service on the golf course. The Park District doesn't want to go that far. They just want people to be able to consume alcohol in non-glass containers but while we are addressing their requests we also needed to fix the language for the other golf courses so they can operate in the way they have been.

Chrmn. Rogina: So based on what you've said, D3 envelopes all of our golf courses here in the City of St. Charles into one nice neat package of D3.

Ald. Lewis: And the people who operate the golf carts, their age is 21 or 18? You have to be 21 to open a beer?

Chuck: They are not serving an open container, they are serving a closed container. I've not been to any golf course that serves an open container.

Chief Keegan: Our ordinance reads that you have to be 21 to sell and pour and 18 to deliver. So if they are not in the direct supervision of an adult that is 21 or older, we can talk about it.

Ald. Lewis: Someone must be 21 and the driver of the cart has to be BASSET train like anyone else.

Chief Keegan: If you're in a halfway house and one is delivering and under direct supervision of an adult 21 and older, you would have the 18 threshold. It's no different than delivering alcohol at a tavern or restaurant. If one is by themselves they would have to be BASSET trained and 21 years of age. We'll research this with counsel.

I have one other comment on page 6, second paragraph which talks about Dram Shop and the proprietor's obligation to show proof upon request. There is a correction on the first line where "pursuant" needs to be struck and in the last line of the paragraph the word "shall" should be changed to "may".

Ald. Lewis: Were we going to address places who don't have a license serving alcohol at events?

Chrmn. Rogina: Within our ordinances a place that is going to have an event that does not have a license – give me an example.

Ald. Lewis: Ribbon cuttings, one year anniversaries, ladies night out.

DC Huffman: This question has come up over the years many times. Researching the state liquor code, they do talk about alcohol cannot be given away by a business person or an entity in the furtherance of sale of their product or goods. We have a lot of research to do on this and a lot of discussion on this; if we are going to craft it, how are we going to craft it to best serve the public and the City. At this point we are tabling it for now because we are little late in the game after doing all of these current revisions. There are discussions we're still having and still attend to address.

Chrmn. Rogina: I would like to make an editorial comment that I hope anything we would craft that when a business has a ribbon cutting and decides they want to provide some degree of hospitality, that we use some good judgment so that we can allow it and at the same time be true to our word of not letting things get out of hand. Find the fine balance somewhere. A lot of traditions that have been going on over the years have had no problems and I hate to think as we move forward on this that we are saying you can't do this or this or this. I do think there should be some guidelines/parameters.

Ald. Lewis: In some respects it protects the business. They don't know what they don't know.

Chrmn. Rogina: Absolutely and some of things that Police Chief and Deputy Chief have done, even in moving some of things in here, is to make sure these things are codified so that instead of being silent on the matter, we got something down. I don't have any problem in getting this eventually into an ordinance. I want to make sure we are reasonable so a business can have a ribbon cutting and want to offer wine – they can.

Motion by Mr. Gehn, second by Mr. Amenta to forward these proposed code revisions for Title 5 “Business Licenses and Regulations,” Chapter 5.08 “Alcoholic Beverages” to go before committee for recommendation to City Council.

Roll Call: Ayes: Unanimous; Nays: None. Chrmn. Rogina did not vote as Chairman. **Motion carried.**

5. Discussion of propose code revisions to Title 9 “Public Peace, Morals and Welfare” Chapter 9.09 “Fighting”, Chapter 9.16 “Profanity – Indecent Conduct”, Chapter 9.20 “Disorderly Conduct” and Chapter 9.65 “Administrative Adjudication” to go before Committee for recommendation to City Council.

Chief Keegan: Once again this is a fast forward from our December meeting. I had a chance to have discussion with legal counsel. This has been codified and formatted. We want to be an inviting social experience, but by the same token we want to be firm and fair in our resolve that unruly behavior won't be tolerated. What we discussed in December is before you this evening. There is a piece that I talked about earlier regarding minimum fines and a section that allows us to have more stringent fines for repeat violators. There also is a section on public intoxication that we wrote into our ordinance that mirrors state statute and that is a person in duress might not

necessarily be disorderly or acting out but because of their intoxicated state we are not allow per state statute to cite those folks, but medical attention has to be sought in lieu of any kind of citation or violation. We are in compliance with state statute. Mr. McGuirk has reviewed the language we sent him and we had discussions.

Chuck: Under the fighting Section 9.09, is there any sort of provision for a self-defense situation. Someone comes at me and I defend myself, it seems the wording says “no matter what.” I’m going to be hit with a \$500 fine for defending myself in that situation. Is there any circumstance where the person who is defending themselves may not be penalized?

Chief Keegan: Good question. It comes down to officer discretion. If there’s mutual combatence and we can’t determine on our initial investigation who the aggressor was, than obviously both parties would be subject to a violation/citation; but if its clear cut that we have an aggressor and someone was clearly defending themselves, I would hope the officer would display discretion and that has been the case quite frankly.

Chrmn. Rogina: I would like to point out it that it does say in 9.09.010 “without legal justification.” To me that implies self-defense.

Motion by Mr. Gehm, second by Ald. Payleitner to move these propose code revisions to Title 9 “Public Peace, Morals and Welfare” Chapter 9.09 “Fighting”, Chapter 9.16 “Profanity – Indecent Conduct”, Chapter 9.20 “Disorderly Conduct” and Chapter 9.65 “Administrative Adjudication” to go before Committee for recommendation to City Council.

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

Chrmn. Rogina: This has been an interesting process here and we are nearing the end of it. It’s been intriguing to watch all these revisions. Again great work on the part of our staff.

6. Other Business.

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

8. Adjournment

Motion to adjourn by Mr. Gehm, second by Payleitner to adjourn meeting at 5:50 p.m.

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

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