

LIQUOR COMMISSION MINUTES
April 6, 2017

I. CALL TO ORDER

The Liquor Commission met on April 6, 2017 in the City Council Chambers.

Mayor Chirico called the meeting to order at 3:00p.m.

II. ROLL CALL

Liquor Commissioner
Commissioners

Mayor Chirico
Marc Blackman (3:02pm)
Dr. Jim Ostrenga
Paul O'Toole
Whitney Robbins
Chuck Maher
Joe Vozar
Scott Wehrli
Mitch Stauffer

City Prosecutor

Kavita Athanikar

NDP Liquor Liaison
Secretary

Detective Dan Riggs
Emy Trotz

Mayor Chirico welcomed Bill Bird with the Naperville SUN.

Mayor Chirico also congratulated Dr. James Ostrenga for serving on the Liquor Commission for 22 years and presented him with a shadow box with his badge and thanked him for his years of service.

III. MINUTES OF MARCH 9, 2017 COMMISSION MEETING MINUTES

Minutes from the March 9, 2017 meeting were accepted and entered into record by Mayor Chirico. Chuck Maher moved to approve the minutes, seconded by Dr. Ostrenga. Vote unanimous. Motion carried.

IV. PUBLIC FORUM

No one was present to speak under Public Forum

V. OLD BUSINESS

a. Sidewalk Permitting

Kavita Athanikar stated that at the last meeting the Commission directed staff to bring back a draft ordinance on what the new outdoor seating permit would look like.

The first requirement of the permit is that each permit holder needs to complete an application and an inspection of the property shall be performed by the City including but not limited to the review of site plans, usage of heaters and /or amplification of music, and security cameras.

Secondly, the permits issued shall not be transferrable or assignable and shall not confer any property rights in the underlying City right of way. Permits will begin on April 1st and expire on March 31st. The usage is allowed during the time frame as long as all city requirements are followed.

SPEAKERS

Christine Jeffries, Restaurant Association, gave the Mayor and Commission members a list of suggestions from the Restaurant Association. These are to keep these from becoming an outdoor bar.

1. No bar/high top tables
2. Establish a design guideline for the furniture
3. Establish a fencing/enclosure design guideline
4. Fencing/enclosure should be required for more than two two-top tables
5. The outdoor seating area should not extend beyond an alignment with the establishment's storefront
6. The outdoor alcohol service should be tied to the purchase of food, or those awaiting a table for food service
7. The outdoor alcohol service should end at 10PM
8. No smoking/vaping allowed within the outdoor seating area
9. No live entertainment should be allowed in the outdoor seating area
10. No food preparation should be allowed in the outdoor seating area
11. No sound amplifiers in the outdoor seating area

Chuck Maher questioned if a person was having a drink outside and then going into the restaurant, what would happen. Discussion followed. It was suggested that staff would carry the drinks in or out for the patrons. Christine Jeffries will reach out to the restaurants that will be affected by this and see how they would like to handle the bringing of alcohol in and out of the establishment.

Joe Vozar asked Detective Dan Riggs what he thought about transporting alcohol in and out of the restaurant. Det. Riggs stated that alcohol should be transported by a BASSET trained individual only. Christine Jeffries, Restaurant Association, concurs with Detective Riggs and a BASSET trained individual needs to transport all alcohol in and out of the restaurant. Scott Wehrli concurred that allowing a BASSET trained server as the only one to transport alcohol.

Chuck Maher moved to direct staff to come back to the commission with the appropriate language for an ordinance on consumption, with the addition of the Restaurant Association memo except number 1, seconded by Dr. Ostrenga.
Vote unanimous, motion carried.

Questions were raised regarding amplification, Kavita Athanikar stated that amplification is covered under the City Code and the Clerk's Office issues amplification permits upon application.

Scott Wehrli stated that what is permissible for a downtown patio may not be acceptable for an outdoor Naperville sidewalk.

Kavita Athanikar stated that there are two ways to move forward with the amplification and one is to leave it with code and the discretion of the Mayor's Office or language can be included that codifies specific decibel levels and if we did that it would be within the Requirements of the Permit.

Christine Jeffries suggested that the term the Restaurant Association was discussing was ambient music versus amplified. There could be a definition on what would be outdoor ambient music.

Marc Blackman asked if we needed to define ambient music and the appropriate decibel levels.

Kavita Athanikar feels that the Code Department is very well versed on decibel levels and would be able to give the Liquor Commissioner a good over view of what each permit holder is requesting. This would be considered by the Liquor Commissioner and Code for approval. Scott Wehrli stated that in the memo that goes to City Council that we show discussion on the ambient music. Neighboring communities are having problems with restaurants using their sound systems as a way to get people into their establishments.

Mayor Chirico stated that he would like to see draft language regarding amplification or language that states decibel level not to exceed, but feels that the Code language describing noise levels may work.

Requirements of Permit

Mayor Chirico stated that in the previous motion High Top Tables were excluded. This would be where it should be included.

Marc Blackman asked for discussion on this.

Joe Vozar stated that he doesn't know that High Top Tables is a liquor commission issue unless it's regarding safety. Scott Wehrli remarked that this is the Restaurant Associations recommendation and he's okay with it. Chuck Maher is okay with Mayor Chirico making that decision on a case by case basis.

Permits begin on April 1st and expire on March 31st of the following year, usage is allowed throughout this timeframe as long as the permit holder complies with all City requirements. Permit holder shall complete an application and an inspection of the property shall be performed by the City including but not limited to the review of site plans, usage of heaters and/or amplification of music, and security cameras.

This paragraph allows a case by case review of each request. This would be considered under the application process.

Joe Vozar asked who would be making decisions on security cameras. Detective Riggs said that this would be discussed at the Liquor Concept meeting.

Joe Vozar asked about discussing caps on the number of permits.

Mayor Chirico stated that there will only be 5 or 6 who will qualify for this permit. This ordinance is only for the Downtown Business District.

Marc Blackman moved to approve Requirements of Permit paragraph one with the inclusion of amplification and decibel levels, seconded by Dr. Ostrenga. Vote unanimous, motion carried.

Kavita Athanikar stated that the second paragraph entails mandating that the permit holder include outdoor seating in their certificate of insurance. Paragraph three indicates that the public way must be kept free from refuse at all times and no food preparation permitted on the public way. All public improvements on the public way shall be maintained in the existing condition as the time the permit was issued, the permit holder shall be responsible to the City for any damage to any public improvements where such damage arises due to the operation of the outdoor seating area. The outdoor seating area shall be clearly designated with a permanent or semi-permanent barrier as approved by the City.

The commissioners were shown an option for a semi-permanent barrier. Mayor Chirico would like to have this option as a standard.

Marc Blackman asked if the topic of transporting alcohol should be included in this section or another section. Kavita Athanikar stated that it doesn't matter because they have to adhere to all of these restrictions. Currently it is included in the consumption section.

Chuck Maher agrees that we need some type of fencing. He would like to come back with suggestions on types of material and size. Christine Jeffries volunteered to work with Allison Laff and her team to come up with three options of fencing and bring it back to the commission.

Joe Vozar is comfortable with the way this reads because it is up to the Mayor and TED for approval. Joe Vozar moved to approve paragraphs two and three as written, seconded by Whitney Robbins. Vote unanimous, motion carried.

The fourth paragraph states that the use of the outdoor seating permit shall be conducted in a way that does not interfere with pedestrian use. All items placed on the public way for the operation of an outdoor seating area shall be located so that a clear path of at least five feet shall be provided for passage of pedestrians and so as not to obstruct ingress and egress from the licensed establishment or any other establishment.

Scott Wehrli stated that the word continuous should be added so that it would read at least five continuous feet. Marc Blackman moved to approve paragraph four with the addition of the word continuous, seconded by Dr. Ostrenga. Vote unanimous, motion carried.

Kavita Athanikar stated that the commission did not direct staff to add anything under container restrictions.

Food Service: The service and consumption of alcohol on the public way shall be incidental to the service of meals.

Annual Fee: Except within a permitted outdoor seating area or otherwise licenses, it shall be unlawful for any person to consume any alcoholic liquor upon any public property.

Outdoor seating permit on public way with liquor service: \$500.00

Outdoor seating permit on private property with liquor service: \$300.00

Outdoor seating permit on public way with no liquor service: \$100.00

The last portion of ordinance is time frame. Liquor service on public property shall cease by 10:00pm.

Chuck Maher requested that the words Downtown Businesses Only be included in the ordinance.

Dr. Ostrenga moved to approve the last three sections of the ordinance as presented, seconded by Chuck Maher. Vote unanimous, motion carried.

Chuck Maher moved to direct staff to bring back the ordinance to the commission for final review, seconded by Marc Blackman. Vote unanimous, motion carried.

Joe Vozar had hoped that this would be done on a trial basis. He would like to have a summit with the Police, Restaurants and Mayor to assess this at the end of the summer.

Mayor Chirico said we could put a one year sunset that would need to be reapproved by City Council or since this is a permit, they need to apply for it each year. We don't have to issue it.

Mayor Chirico left the meeting at 4:20pm. Commissioner Scott Wehrli took over running the meeting.

VI. NEW BUSINESS

a. Open Meetings Act

Kavita Athanikar wanted to mention a new legal opinion from the Attorney General's Office. It centers upon how we conduct business as a commission. The Public Access Counselor (PAC) just decided on two important decisions on Liquor Commissions in the State of Illinois. We have been operating under the Open Meetings Act for as long as we have existed. Now the PAC says that the Liquor Commission is not subject to the Open Meetings Act.

Open Meetings Act requirements:

1. Meetings are open to the Public.
2. Meetings must be held at a specific time and place that is convenient to the public.
3. A quorum is necessary to conduct business.
4. Public notice must be given at least 48 hours prior to the meeting.
5. The meeting must be recorded and minutes kept.

While these are no longer requirements for the Liquor Commission, the Liquor Commissioner still wants to operate under these guidelines. We will still continue to operate with these provisions in place. The one thing is that we did agree a few meetings ago that a packet goes out prior to each meeting that contains materials that will be discussed at the meeting. There is no requirement for those packets. We will continue to provide those packets as they become