

City of Naperville

*400 S. Eagle Street
Naperville, IL 60540*



Naperville

Meeting Minutes - Final

Thursday, November 4, 2021

3:00 PM

Council Chambers

Liquor Commission

A. CALL TO ORDER:

Mayor Chirico called the meeting to order at 3:00 PM

B. ROLL CALL:

- Present** 7 - Mayor Steve Chirico, Dana Davenport, John Koranda, Charles Maher, Anthony Signorella, Joe Vozar, and Scott Wehrli
- Absent** 3 - Karyn Charvat, Mitch Stauffer, and Kimberly White

Staff Present: Miranda Barfuss, Assistant to City Council; Jennifer Lutzke, Senior Assistant City Attorney; Dan Riggs, Police Detective; Marty Creighton, Police Officer; Dawn Portner, Special Events Coordinator

C. PUBLIC FORUM:

None

D. OLD BUSINESS:

Approve the revision to Liquor Commission rules adding a pre-application meeting requirement for new special event organizers

Attachments: [Liquor Commissioner's Rules DRAFT 110421](#)

Mayor Chirico reviewed discussion from the last meeting regarding adding a requirement for a pre-application meeting with new special event organizers to ensure they understand the liquor rules in Naperville and the broader discussion of event management companies partnering with a local non-profit organization only in order to acquire a Special Event Permit. They give a token donation to the non-profit partner and then keep all the proceeds from the event while the non-profit, as license holder, is taking the risk for the event, which was not the intent of the Special Event Permit.

Lutzke reported on research she conducted, at the request of Commissioner Wehrli, on the Illinois Liquor Control Commission's third-party promoter rule. The rule only applies to the relationship between manufacturers and retailers and does not apply to special events. She went on to say that the proposed rule on the agenda addresses the requirement for a pre-application meeting with the Mayor, the police liaison to the Liquor Commissioner, and other applicable staff. It was not clear from the last meeting if there was a consensus on requiring a percentage of event profit to be given to the non-profit liquor license holder or other information the Commission wants to include.

Commissioner Koranda made a motion to approve the addition of the liquor commission rule as presented, seconded by Vozar. The motion was approved and carried by the following vote:

Aye: 6 - Davenport, Koranda, Maher, Signorella, Vozar, and Wehrli

Excused: 1 - Mayor Chirico

Absent: 3 - Charvat, Stauffer, and White

Wehrli reported that our liquor code defines a Third-Party Promoter as “an unlicensed, paid or unpaid, person or entity engaged in the business of or assists in the marketing, operating and organizing an event.” He went on to say that historically there were issues with third-party promoters and Class B establishments where the promoter would cause a violation and the Class B license holder would then be responsible for it. He does not see a lot of difference between those situations and the Special Event Permit situation and reemphasized the need to protect the non-profit license holders. Mayor Chirico stated that there are many third-party companies who hold events in Naperville (e.g. the Naperville Women’s Triathlon), but if the event does not have a Special Event Permit, they are not under the purview of the Liquor Commission.

Commissioners discussed the possibility of adding a legal rider to the Special Event Permit application that makes the third-party company responsible for violations, rather than the non-profit, and gathering more information from the non-profits who have partnered with third-party companies to see what they were paid. Barfuss reported on inquiries she made. Festa Italiana 2019 made a \$2,500 donation to the Naperville Jaycees for being their non-profit license holder; Festa Italiana 2021 made a \$2,500 contribution to the Naperville Humane Society, as well as \$3,900 donation as a portion of proceeds following the event; and the Naperville Summer Ale Fest made a \$4,000 donation to the West Suburban Irish for their partnership. Lutzke stated that one suggestion would be writing a specific percentage of proceeds into the requirements of the Special Event Permit.

Mayor Chirico asked Dawn Portner to comment on whether we are aware of situations where third-party promoters find a non-profit partner only in order to acquire a liquor license for the event. Portner affirmed that that was the case with Festa Italiana in 2021. They did not have a charity partner until we issued them a list of local non-profits; they asked if we could contact the partners for them and she clarified that it is not the City’s responsibility to do that.

Davenport asked if third-party companies are committing liquor violations in addition to the perceived misuse of a local non-profit organization. Mayor Chirico stated that in many cases local non-profit events are fundraising events with organizers that are invested in being respectful to the community and following liquor commission rules. Event promoters, however, are often holding a one-time event and they are not as invested in caring for the community and ensuring liquor rules are followed. Wehrli affirmed that this was the intent of the Special Event Permit. It was for non-profit organizations to hold fundraising events with liquor and not for every private promoter to hold events in Naperville whenever they want to.

Commissioners discussed gathering more information from the non-profits, continuing the requirement that the non-profit partner be located in Naperville, the merits of adding a percentage of proceeds requirement to the Special Event Permit, whether a requirement would deter event promoters from holding events in Naperville, and if advising the non-profit on the amount they should require and best practices in partnering with an event management company could be a less restrictive approach. Mayor Chirico reemphasized that this only applies to events that have liquor permits and stated that he supports deterring outside promoters from using the non-profit to their own advantage.

Commissioner Maher made a motion to have staff gather data and bring recommendations for revising the Special Event Permit or the liquor commission rules for the next meeting, seconded by Vozar. The motion was approved and carried by the following vote:

Aye: 6 - Davenport, Koranda, Maher, Signorella, Vozar, and Wehrli

Excused: 1 - Mayor Chirico

Absent: 3 - Charvat, Stauffer, and White

E. NEW BUSINESS:

Consider Features Bar & Grill's request for an extension of the temporary outdoor seating provision

Attachments: [Cover Letter to Liquor Commission](#)

Lutzke reported that, during the COVID-19 pandemic, the City relaxed outdoor seating requirements via Executive Order and allowed businesses to operate without a permit, extending seating areas to the public sidewalk and areas of the street in front of their building's facade and beyond, if they received permission from the neighboring property owner. The order was extended via City Council action until October 1, 2021. Typically outdoor seating is allowed on the public way until November 1st when they must be removed for snow removal; temporary outdoor seating permits were treated in the same manner. Currently, we do not have any way for

businesses to continue to use their permanent or temporary outdoor seating absent City Council action. Mayor Chirico agreed that he would like to address the rail car issue for Features and expand the discussion to find a broader solution for businesses that are currently still using their outdoor seating and are in violation of the code.

Russ Whitaker, attorney for Features and member of the Downtown Naperville Alliance (DNA) Board, reviewed that City staff, DNA and the Naperville Development Partnership (NDP) developed a plan for redesigning storage containers as rail cars as a form of temporary outdoor seating. Riff Menza, owner of Features, agreed to be the pilot owner of a rail car set up and invested nearly \$30,000 in the project to make them attractive, functional and appealing to patrons. That investment was not recouped in one season and he is requesting to be able to use the rail cars again this year as soon as possible. The COVID-19 pandemic is not over and restaurants have struggled for two years to stay in business. Mayor Chirico agreed that the City took these actions when occupancy limits were in place for restaurants. The City of Chicago lost 800 private restaurants. Naperville's impact was not as severe because we took quick action to allow temporary outdoor seating and encouraged the rail car idea, implying that funding for this project could be reimbursed by CARES grant money. No promises were made, but it was implied. Mayor Chirico went on to say that he is sympathetic to the plight of restaurants and the Liquor Commission is an appropriate entity to support a recommendation to the City Council.

Commissioners clarified that Features is the only business with rail cars in public parking spaces and asked if there were liquor violations or significant complaints about restaurants using temporary outdoor seating areas. Riggs replied that there were not. Mayor Chirico and Barfuss concurred. Whitaker noted that DNA did receive complaints about loss of parking by business owners, however, the DNA Board supports Features' request. Maher clarified that we are only discussing the loss of 3 public parking spaces for the rail cars at Features. Mayor Chirico noted that parking options are immediately increasing following this week's City Council meeting with the action to end 30-minute parking and open the top levels of the parking garages for permit holders. He also noted that the rail cars do not extend beyond the facade of Features and Club Mamalu. Menza confirmed that this is true.

Commissioners discussed how allowing this for Features would impact other businesses, that restaurants are not under occupancy restrictions now but patrons still prefer to dine outdoors as a safer option, that the rail cars do not impact snow plowing, and whether a cap might be a mechanism for ensuring this action only applies to Features. Lutzke stated

that we can tailor the proposed ordinance to allow anyone who has the rail cars to utilize them with a specific end date and allowable hours of operation. Mayor Chirico noted that Features is the only business with rail cars and having a cap might give City Council comfort with approving the request. He went on to say that there is a possibility that the City Council will not support this recommendation and would like to add an alternative that includes financial reimbursement for Features, since the business owner took these actions with the encouragement of the City and we have received CARES funds for this purpose. Menza reported that he decided to pilot the rail cars in hopes that others would do it and he did not know his investment was only for one season. He confirmed that other downtown businesses also had the opportunity to do this and they chose not to.

Commissioner Wehrli made a motion to approve the petitioner's request and make a recommendation to City Council to allow Features to use the rail cars, or to provide reimbursement for Features' investment in the rail cars, seconded by Maher.

Wehrli amended the motion to include a sunset date of May 1, 2022 and allowable hours of operation ending at 12:00 PM on weekdays and 1:00 AM on weekends, seconded by Maher. The motion was approved as amended and carried by the following vote:

Aye: 6 - Davenport, Koranda, Maher, Signorella, Vozar, and Wehrli

Excused: 1 - Mayor Chirico

Absent: 3 - Charvat, Stauffer, and White

Whitaker asked that the discussion on temporary outdoor seating should not just focus on the COVID-19 pandemic, because expanded outdoor seating would continue to help businesses during upcoming construction projects in the downtown. Mayor Chirico reported that there are existing businesses in violation of the outdoor seating expiration and highlighted The Lantern, Allegory and Fiamme as examples. He went on to explain that in Fiamme's case, they have an outdoor seating permit for their private property, however, they would now have to pay back a credit they received on the downtown SSA for use of their private parking lot as outdoor dining. Outside of downtown there are also businesses that are still doing temporary outdoor seating on private property. He would like Liquor Commission to consider an action that would require City Council approval, and allow businesses to continue to use public and private property for temporary outdoor seating, at no cost to the business. They would have to abide by the outdoor dining rules that were required before COVID including leaving a walkway and putting up barrier fencing, but they

would be able to use some public spaces and private property for temporary outdoor dining.

Commissioners discussed the need to continue supporting restaurants, that many patrons still prefer to dine outdoors, that there were not complaints or violations while the temporary outdoor seating was allowed and that restaurants would have to ensure they do not impede snow removal efforts. Commissioners asked if tents and heating elements would continue to be allowed. Mayor Chirico replied that tents would not be allowed, however, the igloos and private dining containers on private property would be allowed. Lutzke reported that all temporary outdoor seating areas did need to be inspected by the City and heating elements were inspected by TED and the Fire Department.

Commissioner Maher made a motion to recommend to City Council an extension of the temporary outdoor seating provisions until May 1, 2022, seconded by Davenport.

Maier amended the motion to include that temporary outdoor seating areas would have to go through an inspection process requiring city review and approval, seconded by Davenport. The motion was approved as amended and carried by the following vote:

Aye: 6 - Davenport, Koranda, Maher, Signorella, Vozar, and Wehri

Excused: 1 - Mayor Chirico

Absent: 3 - Charvat, Stauffer, and White

F. REPORTS:

Approve the regular Liquor Commission meeting minutes of October 7, 2021

Attachments: [Liquor Commission Meeting Minutes DRAFT 100721](#)

Commissioner Maher made a motion to approve the regular Liquor Commission meeting minutes of October 7, 2021, seconded by Koranda. The motion was approved and carried by the following vote:

Aye: 6 - Davenport, Koranda, Maher, Signorella, Vozar, and Wehri

Excused: 1 - Mayor Chirico

Absent: 3 - Charvat, Stauffer, and White

Approve the regular Liquor Commission meeting dates for 2022

Attachments: [Liquor Commission Meeting Dates 2022](#)

Commissioner Maher made a motion to approve the regular Liquor Commission meeting dates for 2022, seconded by Davenport. The motion was approved and carried by the following vote:

Aye: 6 - Davenport, Koranda, Maher, Signorella, Vozar, and Wehrli

Excused: 1 - Mayor Chirico

Absent: 3 - Charvat, Stauffer, and White

1. Restaurant Association Report - Jeffries

None

2. BASSET- Employee Training Statistics - Riggs

Riggs reported that we are continuing to do the online course. He would like approval to hold the in-person course again and needs to train 150 Costco employees. The Mayor suggested doing the training on-site at Costco rather than in Council Chambers.

3. Tobacco Enforcement Review - Riggs

Riggs reported on the new tobacco grant year. He has distributed education kits to all tobacco license holders and compliance checks will be done by the end of the year. Mayor Chirico asked about tobacco retailers selling CBD products and vapes for CBD use and asked if minors are allowed to purchase these items. Lutzke stated she believes we are 21+ for CBD in Naperville. Riggs will add CBD to the compliance checks.

4. Liquor Report - Riggs

Riggs reported that there were 14 DUIs in October 2021, compared to 10 in October 2020 and 20 in October 2019. Mayor Chirico noted that there were more Naperville residents cited than the previous month.

5. Liquor Concept Committee Update - Barfuss

Barfuss reported that since the last Liquor Commission Meeting, the Liquor Concept Committee had one meeting on October 21st. The following concepts were discussed:

Friaco's, located at 940 S. Route 59

New business seeking a Class B - Restaurant & Tavern license. Their request is approved and their application is in process.

Inchin's Bamboo Garden, located 618 S. Route 59, Suite 112

New business seeking a Class B - Restaurant & Tavern license. Their request is approved and their application is in process.

Pizza Twist, located at 936 S. Route 59, Unit 104

New business seeking a Class A - Restaurant license. Their request is approved and their application is in process.

Bev's, located at 245 S. Washington St., the Jimmy's Grill location

New business seeking a Class B - Restaurant & Tavern license with a late night permit and outdoor seating permit. Their request is approved and their application is process.

Cheap Cheap Liquors, locating at 88 W. Gartner Rd. #104 and 1274 E. Chicago Ave, the Peterson's Wine locations

New business seeking Class D - Package Store licenses. Their request needs further review and the status is pending.

Miskatonic Brewing Wursthall, located at 47 E. Chicago Ave. Suite 120

New business seeking a Class B - Restaurant & Tavern license with late night permit. Their request is approved, and their application is in process.

G. EXECUTIVE SESSION:

None

H. ADJOURNMENT:

Commissioner Vozar made a motion to adjourn the Liquor Commission meeting of November 4, 2021 at 4:36 PM, seconded by Davenport. The motion was approved and carried by the following vote:

Aye: 6 - Davenport, Koranda, Maher, Signorella, Vozar, and Wehrli

Excused: 1 - Mayor Chirico

Absent: 3 - Charvat, Stauffer, and White

/S/ Miranda Barfuss
Miranda Barfuss
Assistant to City Council