

MINUTES
February 25, 2013
Government Services Committee
City of Batavia

PLEASE NOTE: These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. Minutes are intended to make an official record of the actions taken by the Committee/City Council, and to include some description of discussion points as understood by the minute-taker. Any references to discussion and/or statements are only to provide greater clarity to the public and they may not reference all, some, or any of an individual speaker's comments.

Vice Chairman Sparks called the meeting to order at 7:31 p.m.

1. Roll Call

Members Present: Aldermen Chanzit, Liva, Sparks, and Thelin Atac
Members Absent: Aldermen Dietz, Stark, and Tenuta
Also Present: Aldermen Frydendall and Volk; William McGrath, City Administrator; Police Chief Schira, Mayor Schielke (7:33 p.m.), and Connie Rizo, Recording Secretary

2. Approve Minutes for February 11, 2013

Motion: To approve the 2/11/13 Government Services Committee meeting minutes.
Maker: Chanzit
Second: Thelin Atac
Voice vote: 4 Ayes, 0 Nays, Motion Carried.

3. Items Removed/Added/Changed

None.

4. Municipal Code Revision Discussion: Liquor Code (WRM 2/22/13)

Bill McGrath stated tonight's discussion was a continuing review of the municipal liquor code that was in need of revision.

McGrath opined that the main issue in the previous liquor code discussion was the requirement of BASSET training. McGrath stated since that discussion it has been noted in a lot of the cities a desired use of alcohol for grand openings and social gatherings that are different from what Batavia has previously experienced. McGrath indicated in addition to that issue the BYOB issue where patrons carry in their own liquor needed to be addressed.

McGrath shared that a lot of work has been done by Chief Schira, Deputy Chief Eul, Scott Buening, Atty. Kevin Drendel, and Atty. G. Tyler Stevenson relative to the liquor code review. McGrath explained as the review began it was noticed that a lot of the classifications related more with the times when the liquor code was created and were not applicable to today's situation. McGrath indicated it was impossible to edit the old code and realized it was necessary to rewrite a new draft of the liquor code. McGrath mentioned that the police brought in several other cities liquor codes and then pieced together what was the best from those that were reviewed. McGrath commented that the important items that needed to be addressed for Batavia are contained in the rewritten new draft of the liquor code and do not interfere with any current liquor license holders to continue to have a liquor license.

McGrath stated the section on the outside seating license agreement would be worked on as well as those wanting to serve alcohol on public property and the issue of live entertainment. McGrath conveyed that Atty. Drendel advised the best way to handle all of those issues would be to set up basic classifications (i.e. package, restaurant, grocery store) to make it simple. McGrath indicated if a license is desired for an outdoor or an entertainment event it would be an adjunct license. McGrath stated the rewritten draft is set up taking these factors into account.

McGrath expressed that the reason for the rewriting of the liquor license is to modernize the code. McGrath stated the project was not done with the intent to add more classifications to increase revenue. McGrath stated when the letters were written to the current liquor license holders it was made clear that fees would not be discussed until the next Government Services Committee meeting if the members desired to do so.

McGrath stated at the last meetings there was a focus on what was deemed the loosely regulated uses (BYOB=Carry In license, special uses, and special events) of alcohol and so it was discussed and included in the rewritten draft version. McGrath stated a reasonable amount of time would be given for necessary individuals to get the required BASSET training and he pointed out that it is not required of every single person who works in a tavern or restaurant, but just those who serve the public liquor. McGrath stated it has been made clear about the prohibition of giving alcohol away.

Chief Schira reiterated what McGrath stated about reviewing several other cities liquor codes and then piecing together what was the best from those that were reviewed. Chief Schira indicated the group was especially mindful of the bordering cities to Batavia. Chief Schira mentioned that there are items in Atty. Drendel's 2/20/13 policy decisions (refer to document) that staff could make decisions on that the aldermen need to be aware of.

Vice Chairman Sparks inquired what classification the BYOB establishments would be under. McGrath stated they would be under the Carry In Class C license. Chief Schira indicated that was a newly created liquor license class. McGrath shared that he met with the establishments in Batavia that fall in this class. McGrath stated that after doing some research it was discovered that dram shop insurance costs about \$500. McGrath

added that staff has discussed a fee of \$150 for the Carry In liquor license since the establishment would not be making any revenue from selling the alcohol.

McGrath shared that the first issue that Atty. Drendel pointed out was that under law the Mayor has the authority to issue liquor licenses if there are licenses created to distribute. McGrath stated the way the City has always kept absolute control over this is by creating new licenses when someone applies for one and then if the Committee deems it appropriate then it is created and when someone goes out of business unless someone is in the queue the code is changed again. McGrath stated that is a lot of legislation on the part of the Committee and he opined whether that would keep the same kind of control as previously. McGrath stated the Committee should discuss if they want to keep it that way or set an absolute number of licenses and allow the Mayor to give out those liquor licenses.

McGrath stated another policy issue to be discussed is since the overlay licenses by their nature are not necessarily limited it was thought if the status quo was kept for creating licenses and consenting to the award of licenses then at least on the temporary licenses and overlay liquor licenses those might be treated differently and would allow the Liquor Commissioner (Mayor by statute) to issue those temporary or overlay licenses.

McGrath indicated State law forbids alcohol to be given away unless it is for a "commercial purpose" and alcohol can only be given away according to State Law at a purely private functions (invitation only and closed to the public). McGrath stated if someone wanted a commercial use for alcohol a license would need to be obtained and it would need to be sold.

Ald. Volk inquired what would prevent someone from gaming the system. McGrath indicated that the liquor commissioner has seen all the games and an admission price could not include all the alcohol consumption one would want. McGrath indicated the appropriate license would need to be obtained for all dispensing of liquor. McGrath made mention that for special events if liquor is to be given the literature would need to point out a certain portion of the entry fee is to purchase alcohol and there would be a ticket system for distribution.

McGrath stated another policy issue was regarding whether the Committee would be in favor of the Liquor Commissioner having the authority to delegate to a Deputy Liquor Commissioner that would allow such an appointed person to do all the things the Mayor can do except for the power to issue licenses, revoke licenses or to suspend licenses (except temporarily in emergencies).

Ald. Volk stated he did not see a reason for a Deputy Liquor Commissioner and people should plan ahead if they need a liquor license and applicants should be made aware it could take up to six weeks to obtain the liquor license. Ald. Volk indicated if others were inclined to have a Deputy Liquor Commissioner it should be set up that the Mayor should seek the advice and consent of the City Council before appointing a Deputy Liquor Commissioner.

McGrath stated there has been discussion over the last several years on whether the City should issue tavern-only licenses. McGrath stated there were only a few businesses in Batavia that would qualify for a tavern license because any other license under the new framework is a restaurant license and a menu needs to be served until 11:00 p.m. and after that some type of food must be offered. McGrath indicated the philosophical discussion is whether the Committee wants to just designate a certain number of tavern licenses and then in the future decide whether to keep that number or not depending on what is observed in the City.

Chief Schira stated if the license was given to an establishment as a tavern then there would be no requirement to serve any food any time of day. Chief Schira indicated it would be a policy decision if the City Council wanted to strictly have tavern licenses and if they wanted to grandfather current locations in or as those phase out the City may not issue any more. Chief Schira mentioned having to enforce if a location serves food is too hard to enforce, so having strictly a tavern license may be the option.

Ald. Liva inquired if it was prohibited to do package sales out of a tavern.

McGrath stated under the current City Code it could be interpreted that if one has a restaurant or bar that someone could, in fact, sell packaged liquors and he believed that there was one place that does. McGrath indicated the group wanted to bring that issue to the Committee's attention and there is a packaged liquor license that excludes gas stations and convenience stores. Staff has maintained that distinction in the current, new draft. McGrath stated that City Staff does not necessarily recommend it. McGrath expressed that another policy decision should be made around the issue of a tavern or restaurant having an adjunct license to sell package liquors. Chief Schira mentioned that scenario does exist at the present time.

Ald. Liva mentioned that the craft beer phenomenon has become popular and indicated that he would not look to prohibit packaged liquor to be sold from these type locations. McGrath stated City Staff was not against the practice, but desired clarity for the police department because it could be potentially locations where sales to minors may be an issue to be aware of. Chief Schira indicated for a Class A type establishment to sell packaged liquor has probably occurred for years and is what it is. Ald. Volk inquired if the City would then consider making these types of establishments have dual licenses as a tavern as well as retail sale. Chief Schira indicated dual licenses have been discussed. Ald. Volk agreed with Ald. Liva that if the packaged sales were a limited amount he would not be against it without the establishment needing dual licenses. Ald. Volk spoke in favor of tavern licenses as well.

McGrath stated the current code has a seasonal packaged liquor license that is intended to allow the sale of beer or wine in conjunction with the farmers market. McGrath stated it has not been included in the new draft code. McGrath indicated if the Committee would like to keep such a license, it would need to be added.

Vice Chairman Sparks stated of the concern of the numerous license classifications the new liquor code would contain. Vice Chairman Sparks also spoke to the concern for the establishments having to pay an increased amount to obtain multiple liquor licenses. Vice Chairman Sparks inquired if the establishments hold multiple licenses currently. McGrath replied establishments do not hold dual licenses currently because the adjunct licenses do not exist. McGrath suggested a master liquor license application in the future and did not believe there would be many, if any, requirements if the establishment wanted to have, for example, a live entertainment license. McGrath stated the intent is not to have increased revenue, but rather the establishment's main liquor license fee would be paid and any additional liquor licenses would be a lower fee. McGrath reminded the Committee that when someone at an establishment is allowed to take the sale of liquor beyond their normal inside space, the City is giving the location an opportunity to have more square feet to sell more and make more money. McGrath opined that these additional adjunct licenses would be more administrative than revenue producing. Also, McGrath indicated for the adjunct licenses to establishments that already have their main liquor license it was thought that the Mayor, as Liquor Commissioner, could process those adjunct licenses and grant them.

Chief Schira stated that one of the things that is being requested is either to allow the Liquor Commissioner to handle the adjunct licenses or eliminate the Committee level review and have these types of license requests go directly to the City Council.

Ald. Chanzit inquired if the purpose of the adjunct licenses was just to identify what type of liquor sale activity was being conducted. Chief Schira confirmed same and expressed that the aldermen would also benefit from knowing what type of activity is being conducted in their ward. Chief Schira also mentioned that these types of activities for liquor license sales should also be consistent with the noise ordinance for the hours of operation which is 10:00 p.m. Sunday through Thursday and 11:30 p.m. on Friday and Saturday. Chief Schira pointed out that inside live entertainment can take place until 2:00 a.m. Ald. Volk agreed with Chief Schira about the aldermen knowing what is occurring in their ward being beneficial.

Ald. Volk inquired what was the real cost to issue a liquor license. Ald. Volk stated he did not agree with liquor licenses being a source of revenue and just wanted the fee charged to cover the actual cost of the liquor license. Ald. Volk stated if money is needed for the General Fund property taxes should be raised and not using license fees as a system to generate funds.

Ald. Thelin Atac stated she also shared concern about the cost to establishments for conducting business outside their establishment (i.e. \$1,000 bond).

McGrath stated that some of the liquor sales hours are in some classifications, but not all. McGrath stated in the new draft all the hours have been placed in its own section called "Hours of Sale" and state that liquor cannot be sold at any other time other than 9:00 a.m. to 2:00 a.m. Packaged liquor sales can be sold 9:00 a.m. to 11:00 p.m. Sunday through Thursday; 9:00 a.m. to 12:00 midnight Friday and Saturday. For restaurants requiring a full menu, liquor can be sold until 11:00 p.m. and reduced menu

thereafter. Temporary Event Licenses limit liquor sales to 15 hours per day within the hours allowed. Liquor sales with live Entertainment until 10:00 p.m. Sunday through Thursday and 11:30 p.m. Friday and Saturday. McGrath stated that the real change in the hours of sale section was in the sale of packaged liquor because previously it was allowed for restaurants to have champagne brunches so they could open at 10:00 a.m. on Sundays, but the new draft is an attempt to simplify the hours. McGrath stated if the Committee felt otherwise the Staff was open to discuss the hours of sale for liquor sales.

McGrath indicated that for the BYOB – Carry In liquor license holders there needs to be more discussion on the issue of who stores and pours the alcohol to understand the protections necessary in these situations. McGrath stated the carry in liquor license holders would be required to carry dram shop insurance and should be responsible for patrons not becoming over served. McGrath stated there would also be something in the liquor code to require the carry in liquor license holders to cooperate with the police if issues exist.

McGrath mentioned that the city fair license was eliminated and a general special use license was added to authorize by Ordinance city property on which alcoholic beverages may be sold. Ald. Volk asked for clarification of the property that is considered city property and what is the Batavia Park District. Ald. Volk also mentioned that Clark Island was missing from the list proposed. McGrath stated that Clark Island is public property, but owned by the Park District so not City property. Atty. Drendel was not fully aware of the city property boundaries when he began this draft. McGrath indicated there is a separate project that is to realign the boundaries at the City Hall campus, so that the building is actually on the city property and the Peg Bond Center is all on Batavia Park District property. McGrath indicated that there is no intent to attempt to regulate the Park District because they have their own statute that allows them to permit alcohol with a license. Ald. Volk commented that it would be good to have a map to make the boundaries clear.

McGrath indicated that a policy decision would need to be made relative to an anomaly in the fees because it might not be fair to treat everyone in the similar category the same. McGrath mentioned that the example provided by Atty. Drendel was that a 2,000 square foot liquor store and a 30,000 square foot Binny's (if Batavia had one) should potentially not pay the same license fee. Chief Schira stated that the same situation on fees could apply to restaurants by seating capacity.

Vice Chairman Sparks inquired how much the BASSET training cost. McGrath replied the BASSET training could go between \$15.95 and \$25.00.

McGrath stated that Atty. Drendel expanded the prohibitions regarding terms relating to minors, consumption by minors, and furnishing alcohol to minors.

McGrath mentioned that relative to reporting crime and cooperating with the police Chief Schira had suggested adding affirmative obligations to report crime and cooperate with the police which would give the Police Department a much better handle on activities in

the City involving alcohol. Chief Schira stated in his professional experience with active disorderly conduct or battery the police would desire the management of a liquor sales location to call in the situation to the police so a response could be made and the situation could be sorted out. Vice Chairman Sparks inquired since bars tend to have video cameras and when a crime is committed in a bar did the police have a right to the video. Chief Schira stated bars are privately owned and the video cannot be required, but the police would certainly seek the cooperation of the bar owner.

McGrath stated that Happy Hour Laws are a matter of state statute, but it was important to include them specifically in the local liquor code so that anyone reviewing the City liquor code would see them.

McGrath stated relative to after-hours situations neighboring municipalities, especially St. Charles, have had issues with alcohol consumption after hours. McGrath indicated the new draft includes new provisions that would make clear that all alcohol consumption must stop when the hours for serving alcohol cease and would give the police clear direction for enforcement.

McGrath commented that the new liquor code draft makes it very clear that there shall be no possession of open alcohol or consumption on public property unless specifically authorized pursuant to a validly issued license.

McGrath indicated the license revocation and suspension hearing procedures are now more complete and detailed in the new draft to conform to State Law and to be clearer in the local liquor code.

McGrath advised the current code does not have a penalty/fine section and the new draft includes one.

Ald. Thelin Atac inquired about City employees or Government Officials not being able to hold a liquor license directly or indirectly. Ald. Thelin Atac stated she is working on the food co-op for downtown Batavia and that food co-ops generally have liquor licenses. Ald. Thelin Atac explained that most people are members in food co-ops through ownerships of shares. Ald. Thelin Atac stated the food co-op she is involved with would be structured as a for profit cooperative corporation with each member owning two shares, thus any City employee or elected official could not be a member the way she interpreted the liquor code. McGrath replied he did not believe there was a prohibition against employees presently, but elected officials were prohibited from holding liquor licenses. Chief Schira stated police cannot hold liquor licenses. McGrath indicated there has been a change in State Law that allows elected officials, except Mayors, to have ownership shares if the City Council would change the liquor code. Ald. Thelin Atac indicated that Chapter 3, Section 3-3-11, of the Liquor Control documentation under RESTRICTIONS ON ISSUANCE/RENEWAL states no such license shall be issued to or renewed for "P. An elected public official, law enforcement officer, the Mayor or member of the City Council of the City, or employee, or member of any City board or commission." Ald. Volk inquired if there was a distinction between who holds the liquor license when it comes to situations like the co-op. Mayor Schielke

commented this topic fluctuates throughout the state and gave the example of Drew Peterson, former Bolingbrook Police Officer, who held a liquor license for a tavern in another city in Illinois. Mayor Schielke stated he would be interested for further discussion on this topic with the entire City Council. Mayor Schielke added that limitations should be in place for indirectly being an owner of a business that sells liquor. Chief Schira indicated currently the cut off for ownership in a company is 5%. Chief Schira expressed the awkwardness of administering the law when it comes to the issues of elected public officials owning liquor licenses. McGrath stated he would have to review the matter further with Atty. Drendel.

Ald. Thelin Atac inquired about the square footage requirements for different businesses being able to sell liquor as mentioned in Chapter 3, Section 3-3-15 B. Ald. Thelin Atac opined that the liquor code seemed to be in favor of the bigger stores, but offered the co-op as an example and indicated it would be 4,000 square feet of retail space. Mayor Schielke indicated if the local liquor code is changed relative to the classifications Ald. Thelin Atac was mentioning that would instantly create 12 more licenses in Batavia. Ald. Thelin Atac pointed out the classification discourages businesses like the co-op from selling liquor. Mayor Schielke encouraged further discussion on this matter. McGrath indicated this issue could be reviewed further. There was a brief discussion about the sale of liquor at gas station locations.

Ald. Volk mentioned Chapter 3, Section 3-3-30, Prohibited Conduct, and inquired how to keep these descriptions in sync with the adult entertainment ordinance in Batavia. McGrath stated he would discuss it further with Atty. Drendel to make sure it is current.

Chief Schira mentioned that a policy decision should be made between a small packaged store and big packaged store and small restaurants and large restaurants.

McGrath shared that liquor sales have been an important issue in the United States and it is one of the matters that local government still has a lot of control over, so it is good to reflect on issues historically related to liquor sales. Mayor Schielke offered the example of the difference of Batavia, NY and Batavia, IL and the differences in the local liquor code. McGrath commented how four years ago there was a change in State Law, but that prior to that local liquor codes were to mirror State Law. Mayor Schielke spoke in favor of Liquor Commissioners themselves not holding liquor licenses.

Dale Richard, 1118 Larkspur, Batavia, Illinois, introduced himself and indicated he was representing the Batavia VFW. Richard stated that his main concern on the revision of the local liquor code was impacts regarding the Batavia VFW Loyalty Day Parade. Richard commented on how the VFW is billed for electricity and the \$1,500 demand charge and the \$1,000 demand charge in their bingo building. Richard spoke about how the Loyalty Day Parade was cancelled last year by the weather and the low amount of funds for the fireworks display. Richard indicated he was concerned about the multiple liquor licenses as well as square footage criteria the new draft of the liquor code may require and the fee impact to the VFW. Richard agreed with Ald. Volk that no license should exceed the cost to issue the license. Richard pointed out the VFW is different from other area liquor sale establishments in that it has many outdoor events,

live bands, fundraising events for charities, women's group meetings, and funeral luncheons to name a few. Richard spoke to the potential challenge for liquor licenses for the VFW due to the features of the VFW property like the deck area, outdoor seating, property grounds usage where patrons carry in liquor, band performances on the ground, and karaoke events. Richard stated he believed the VFW was the only Class E license in Batavia. Richard asked for consideration for some type of package on the liquor licenses for the multiple uses that the VFW would fall under in the local liquor code to reduce cost.

Chief Schira mentioned about the VFW potentially needing an adjunct outdoor license and the fencing that is needed to contain those consuming liquor on the property. Chief Schira stated the VFW was inquiring on flexibility in the revised rewritten local liquor code to the fencing because the VFW is on five acres and it would not be practical to have fencing for the area. Chief Schira pointed out other local properties that could potentially be affected.

Carl Dinwiddie, 1156 Pine Street, Batavia, Illinois, introduced himself and stated he has been a member of the board of the VFW for 10 years and also was on the Loyalty Day Committee for 12 years. Dimwitty stated he believed the VFW was the only non-profit service organization with a liquor license in Batavia. Dimwitty stated the VFW earns very low margins and was a service organization that has experienced a loss over a few years in the past, but continues to pay its utilities on time and leans toward using local Batavia companies for services the VFW needs. Dimwitty also mentioned the various organizations that use the VFW for their meetings/events. Dimwitty asked the Committee to consider when rewriting the local liquor code to review ways to eliminate extra administrative burdens on the VFW.

Vice Chairman Sparks inquired if there was any area in the liquor code for non-profit organizations. Chief Schira stated no distinction is drawn between non-profit organizations or others. Chief Schira indicated most non-profits request special use or special event licenses. McGrath stated in the new draft of the local liquor code most of the non-profit organizations licenses are geared toward events. McGrath shared that Class E-1 was for non-profit organizations. McGrath indicated the VFW's remarks were well taken and there would be review of the matter to address them further.

Vice Chairman Sparks inquired about the demand charges on the electric bill for the VFW. Ald. Frydendall, Chairman of the Public Utilities Committee, stated the charge was a demand charge that has been in place because with electricity there needs to be a facility at the location where the power is turned on and the surge in power that occurs for incidental usage.

Chief Schira inquired again about whether the Committee was in favor of allowing the Liquor Commissioner to handle the adjunct licenses or eliminate the Committee level review and have these types of license requests go directly to the City Council. Ald. Volk replied he would like this issue to be discussed when there are more aldermen available for input.

5. Project Status Update

None.

6. Other

None.

7. Matters From The Public

None.

8. Adjournment

A motion was made by Ald. Chanzit and seconded by Ald. Thelin Atac to adjourn the meeting at 8:55 p.m. All were in favor and the motion was carried.

Minutes prepared by
Connie Rizo