



# Naperville

## CITY COUNCIL AGENDA ITEM

**SUBJECT:** Liquor Code Regulations Related to Public Officials

**TYPE OF VOTE:** Simple Majority

**ACTION REQUESTED:**

Pass the ordinance amending Section 5 of Chapter 3, Title 3 of the Naperville Municipal Code modifying the restriction that prohibits elected public officials from having any interest in the sale of alcohol.

**BOARD/COMMISSION REVIEW:**

The Liquor and Tobacco Control Commission recommended (5-1) amending the Liquor Code to modify the restriction prohibiting elected public officials from having any interest in the sale of alcohol.

**COUNCIL ACTION PREVIOUSLY TAKEN:**

Date	Item No.	Action
3/3/15	N.3.	Held first reading of the ordinance amending the Municipal Code to modify the restriction that prohibits elected public official from having any interest in the sale of alcohol

**DEPARTMENT:** Legal

**SUBMITTED BY:** Michael DiSanto, City Prosecutor

**FISCAL IMPACT:**

N/A

**BACKGROUND:** Naperville City Council candidate, James Bergeron, is the principal of two corporations that hold local Class B – Restaurant and Tavern liquor licenses and late night permits.

Section 3-3-5:14 of the Naperville Municipal Code provides that:

“[No liquor license shall be issued to:] Any elected public official, Naperville officer or employee or member of any Naperville board or commission; and no such official shall be interested in any way, either directly or indirectly, in the manufacture, sale or distribution of alcoholic liquor.”

Essentially, this ordinance prohibits any individual who holds a local public office from being issued a local liquor license. Furthermore, it intimates that those individuals who have been issued a liquor license and are subsequently elected to public office may be subject to a legal challenge divesting the elected official from holding a liquor license due to a prohibited interest.

The State of Illinois provides for dual liquor licensing. An individual who seeks to sell alcoholic liquor at retail must first secure a local liquor license and subsequently obtain a state liquor license. In order to receive each license, the liquor license applicant must meet the criteria provided at both the local and state level. Although the Naperville Municipal Code provides for strict standards to public officials seeking a liquor license, the State of Illinois amended its regulations regarding elected officials being issued a liquor license, thus it no longer provides such narrow restrictions. In 2005, the Illinois Liquor Control Act was amended to allow a public official to have a direct interest in the sale of alcohol if he or she is not a *law enforcing* public official, a mayor, a village board president, or president of a county board **and** if he or she does not participate in an official capacity concerning any matter affecting the manufacture, sale, or distribution of alcohol.<sup>1</sup> (See 235 ILCS 5/6-2(14) attached as Exhibit A).

Naperville’s liquor code, however, was not similarly amended. A review of the City’s legislative history on this restriction reveals that since the 1960s the City has maintained a restriction prohibiting elected public officials from holding a liquor license or having any interest in the sale of alcohol.

Naperville’s liquor regulation regarding elected public officials is more restrictive than the State’s regulation. Local liquor ordinances may be more restrictive, but not less restrictive, than the state liquor code. By way of example, whereas state law permits elected officials to be issued a liquor license, Chicago’s liquor code prohibits City Council members from holding an interest in a Chicago liquor license.

### **Liquor Commission**

On February 12, 2015, James Bergeron met with the Liquor Commission and presented his request for the Commission to recommend to the City Council a text amendment modifying the restriction prohibiting elected public officials from having any interest in the sale of alcohol. Mr. Bergeron recommended an amendment to mirror the restriction in the state liquor code that allows a public official to have an interest in the sale of alcohol if he or she is not a law enforcing

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<sup>1</sup> The state liquor code contains two additional exceptions allowing public officials to have an interest in a liquor license if (1) the establishment is not located in the official’s jurisdiction; or (2) the municipality has a population less than 55,000 and the establishment is a restaurant.

public official **and** if he or she does not participate in an official capacity concerning any matter affecting the manufacture, sale, or distribution of alcohol.

The Liquor Commission voted five to one in favor of a text amendment permitting a member of the Naperville City Council or City of Naperville board or commission have an interest in the sale of alcohol subject to conflict of interest provisions. Commissioner Mary Jurgens Howenstine voted against the recommendation stating that a Mr. Bergeron had not put forth a sufficient basis for modifying the regulation Commissioner Jack Barry was absent. (See the February 12, 2015 Liquor Commission meeting minutes attached as Exhibit B).

### City Council

On March 3, 2015, City Council held the first reading of the ordinance amending the Municipal Code to modify the restriction prohibiting elected public official from having any interest in the sale of alcohol.

Council inquired whether other municipalities prohibit public officials from having an interest in the sale of alcohol. It is notable that all non-home rule municipalities in Illinois<sup>2</sup> must follow the State Code, meaning that they allow public officials to have an interest in the sale of alcohol provided they adhere to conflict of interest provisions. Staff surveyed 26 local municipalities and found that 15 municipalities do **not** allow public officials to have any interest in the sale of alcohol and 11 municipalities mirror the State's restriction allowing a public official to have an interest in the sale of alcohol provided they adhere to conflict of interest provisions.

### Allow Public Officials Liquor Licenses

Bloomington      Oak Brook Terrace  
Cook County      River Grove  
Downers Grove      Skokie  
Glendale Heights      Wheaton  
Hillside      Woodridge  
Niles

### NOT Allow Public Officials Liquor Licenses

Addison      Schaumburg  
Chicago      Streamwood  
Elmwood Park      Warrenville  
Forest Park      Westmont  
Hoffman Estates      Wheeling  
Lisle      Willowbrook  
Oak Brook      Wood Dale  
Park Ridge

### **DISCUSSION:**

#### State and Local Laws

The Illinois Liquor Control Act was enacted to regulate the sale of alcoholic liquor in order to protect the health, safety and welfare of the public. The State of Illinois has conferred upon the City Council of local governments the authority to determine by ordinance the number, kind and classification of liquor licenses, however; the authority to determine whether a license shall be issued in the case of a particular applicant is vested solely with the Local Liquor Commissioner. The sale of alcoholic liquor is a privilege and not a right, therefore; the City Council may enact regulations and restrictions on local liquor licenses. When considering whether to recommend

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<sup>2</sup> Illinois has approximately 1,300 municipal governments, approximately 1,100 are non-home rule and approximately 200 are home rule.

an amendment to a liquor license classification, consideration should be given to the core business concept, the City's ability to enforce its restrictions for public safety and appropriate liquor regulations, and the precedential effect the amendment may have on existing and future applicants.

#### Liquor Code Amendment

Per the Liquor Commission's discussion and subsequent recommendation in support of a modification to the City's liquor code, the proposed text amendment addresses two (2) primary issues. First, the proposed text amendment provides clarification by removing and/or restating vague and ambiguous language as set forth below:

- Limits the prohibition to Naperville City Council members rather than "any elected public official."
- Applies the prohibition to **any** Naperville City Council member not just those "elected."
- Clarifies that the prohibition applies to **City of Naperville** employees and **City of Naperville** board and commission members, rather than the existing language that broadly refers to "Naperville" employees and "Naperville" board and commission members.
- Defines the term "interest" in the restriction as any ownership, employment or a family interest, as already defined in Section 1-13-1 of the Naperville Municipal Code (See attached Exhibit C). The existing language refers to the prohibited interest as "interested in any way, either directly or indirectly in the in the manufacture, sale or distribution of alcoholic liquor."
- Limits the prohibited interest to the sale of alcohol only. The existing language also refers to the manufacture or distribution of alcohol which are matters outside of local control.
- Limits the prohibited interest to the sale of alcohol **within the City of Naperville**. The existing language does not limit the location.

Second, the proposed text amendment provides that Naperville City Council members and City of Naperville board and commission members may have an ownership, employment or a family interest in the sale of alcohol provided they adhere to conflict of interest provisions prohibiting them from participating in an official capacity concerning any matter impacting the sale of alcohol. Such an amendment provides for uniformity with state regulations on the subject matter, while still advancing the important criteria of avoiding a conflict of interest.

**RECOMMENDATION:** Pass the ordinance amending Section 5 of Chapter 3, Title 3 of the Naperville Municipal Code modifying the restriction that prohibits elected public official from having any interest in the sale of alcohol.

#### **ATTACHMENTS:**

1. Ordinance
2. Copy of Illinois State Statute 235 ILCS 5/6-2(14)
3. Minutes of February 12, 2015 Liquor Commission Meeting
4. Copy of Section 1-13 of the Naperville Municipal Code