

CITY COUNCIL WORK SESSION TO DISCUSS LIQUOR LICENSE CLASSIFICATIONS

MARCH 8, 2021

The Vandalia City Council met at 3:00 p.m. Monday, March 8, 2021, at City Hall. Present for the meeting were, Aldermen, Russ Stunkel, Andy Lester, Steve Barker, Mike Hobler, Ken Hubler, Bret Brosman (at 3:10 p.m.) and Alderwoman Dorothy Crawford, Mayor Ricky Gottman; City Administrator LaTisha Paslay; City Clerk Peggy Bowen; City Attorney Ryan Connor; Chief of Police Jeff Ray; Media: Erica Foltz, WPMB/WKRV Radio; John Broux, Editor for the Vandalia Leader-Union; Audience Attendance: Tim & Stacy McMillan, CT's Package Liquor; Mark Meadows & Zac Kopp, PMK, Inc D/B/A Daphne's; Lester Kretz, Kretz, Inc.

Mayor Gottman said the purpose of the meeting is to discuss the current classification of liquor licenses issued by the City of Vandalia and possible changes or reclassifications.

Clerk Peggy Bowen reviewed with the council how many licenses have been issued. Class C-2 which is Clubs includes The American Legion, The Moose and the Vandalia Country Club. Class-D, which is Package Liquor includes CT's Package Liquor & Mach 21; Class-E which is Restaurants includes El Taco Fiesta, Blind Society, Los Amigos, Rancho Nuevo, Gallatin Street Grille, Chuckwagon, RVE/Embers, Sixth Street Pub and The Copper Penny; Class-F, which is 1 Bowling Alley; Class-G, which is Taverns which includes The Redwood and Cages; Class-H, which is Beer-Wine-Ale-Stout which includes Willy's; Class- J, which is a Pour License Beer/Wine only includes Discount Tobacco, Discount Tobacco Express, PMK, Inc. D/B/A Daphne's and Spin 2 Win; Class-K which is an Event Center issued to 8TH Day Venue; and Class-L which is 1 Craft Distiller issued to Witness Distillery, LLC.

Alderman Barker began the discussion by stating we have two retail businesses (Class-J) that are not parlors. A parlor that you walk directly into its sole revenue is gaming. The two in question which are Discount Tobacco and Discount Tobacco Express they start off with their business in the front and like any of the other gaming establishments it's in a separate room from their retail sales. Barker said, I think we need to address is where do we put them two and not have them in the "parlor category". City Attorney Connor asked Barker, you are saying that because they operate another type of business these are retail establishments, I'm guessing they sell tobacco and Barker replied by saying yes. Connor asked are they solely retail is that all they do, besides gaming? Barker & Stunkel both said yes. Stunkel also said, a drive-up window, no gambler usually comes through except to buy merchandise. Connor asked, do they permit smoking indoors. The answer was no. Stunkel said, that the gambler can get a beer or soda out of the machine. Lester said, so making the definition between retail is what we need to do? Barker said with an H, Willy's is a restaurant with a basically pour license. We've got other restaurants in town that's bar restaurants that have a different classification, but Willy's is a restaurant that's why it's got a separate license. Barker said, I think this retail could fall under that. Barker asked, what do the other members of the council think? We need to put it in the

right place. Lester said, when you issue a pour license that could be a retail, if you would pour a beer that is a retail sale. I know they sell tobacco and other things but I guess these parlors sell chips and snacks. Stunkel said, I don't know if they really sell much it's more gratuity. Stunkel said that he went to all of them. Barker said, the separation of the two is what we need to address. You walk into the business, just like Willy's it's in a separate room when you walk into Cages and it's in a separate room. There two different ones, they have their main business and they have the gaming to assist them. Lester asked, this tobacco place do they have a separate place Barker said, you have to go through there tobacco place to get to it, it is in a separate room. When you walk into Daphne's or Spin 2 Win you walk directly into it. Lester asked, is it more of a reclassification or is it added language? Stunkel said, you could say it requires a separate entrance. If you were to say, we have four stand alone gaming parlors, I would say that's not true, because I was at all of them and two are without a doubt stand alone gaming parlors. Now, one of the Discount Tobacco more than 50% is tobacco. It was packed. There were two gamers they didn't leave but there was about 30-32 people that was there while I was there between 12:30-1:00 p.m. Now the Discount Tobacco by Land of Lincoln Credit Union not so much. Brosman asked if it has a separate entrance and Stunkel said you go in and they have retail first then you go in the back where the gaming is. They don't sell near as much retail. Stunkel said, if Class-J is to be called "a stand-alone gaming parlor" then we have two that don't belong there. Connor asked Barker, your position is that if there is a separate retail business component, in your mind that is a distinction from the J your saying that's their main source of income. They have the gaming to assist. Connor said that Barker brought this up to him previously and having awhile to think about it, I just want to make sure I'm understanding what your saying and that we're gonna hit what we're aiming for here because if your gonna say that retail business is then going to get A type of liquor license to run a retail business, pour on sight and put gaming as a side component that I don't know as we sit here today if you will see a proliferation of those types of licenses. Barker said, there again, do we cap them too? Connor said, I again fight you on caps there the same that I would fight you on caps anywhere else, of course your going to cap it, today right? Your gonna cap each time you have new licenses. You have a cap right now. Your point would be to up that cap. Barker said, anyone could come and ask for a Class-H license then in that same situation. Barker asked what made Willy's an H? Connor said, here is your H licenses, which shall authorize the sale of beer, ale, stout and lager beer and wine. Alcohol shall only be consumed inside an establishment. In that way, it looks a lot like your other licenses. I don't know, historically how you came to have this license that seems to just name these types of beers. Crawford said, I think they wanted to be clear that they weren't selling liquor that they were only going to serve beer and wine there. Just words of caution, if your going to do this one. Right now, we have those licenses out to Discount Tobacco they have those. Absent their agreement we can't change them mid-stream. We can change them when the license come due in July. If they were to be interested in a different classification or reclassification that would be fine but until then they have a qualified property interest in that license as it's been issued. Hobler said, basically we issued a J license to a business that doesn't qualify for it. The other members of the council agreed with Hobler. They told us, that was the only reason they wanted alcohol to do gaming. We didn't have this issue then, we didn't take it up, we didn't consider them to be separate types of entities at that point. Connor said to Barker, you seem to be making a distinction as to where you walk into the

door whether it's the sole purpose of the business or it's an additional component in a separated space. Barker said, and the differences between some of the other licenses. It's similar to them. Stunkel said some years back, originally, we were trying to assist businesses that were struggling with gaming. Stunkel said, that he liked the cap. We did it for the right reason. It's been seven years, how much more population not 10,000 more that's not justification to change it, Stunkel believes it should be four. Stunkel said, the question is, should the (2) Discount Tobacco stay in the Class-J license. Connor said, let's talk about that cap for a second. Each of your classes will always have a specific number of licenses that are active at any given time. That will always be a defined number. So, four of this type of license those will always be occupied by a license holder. If a license holder gives up their liquor license, goes out of business or that becomes inactive an ordinance comes before this council to reduce the number of licenses immediately. That license is not available and open. It's not until you get another applicant that generally you see another ordinance in front of you to increase the number of liquor licenses. You're never voting on a business your voting on licenses up or down. So, in this instance you would have to open two of a new class. You would have a reclassification into those two new licenses for H, the proposed idea? Barker asked Connor, do you think that is the right area for these two. Connor said, if I'm being candid I don't fully understand the H license and how it differs from other types of licenses. If you were going to do that, and I would just inquire now like of the people that have H, it would seem to me if your going to stick retail into H, we would want to put that in H. We would want to say, this is for businesses and if I were you I would be looking at they must generate sales tax revenue maybe not of any particular amount or anything because you may create additional hurdles for businesses but if your gonna do that, you want to say, look you have to create additional revenue because one of the problems you've had here I think is this business going to generate anything above and beyond gaming revenue and if it's going to do that, the council maybe more inclined to vote in favor of a license or against a license. Say, you have two people at the same time, a retail business and a parlor that both want to come in and you only want to give out one liquor license, I think that generally speaking I think you would be inclined to give out the retail type of license because you see a bump in potential tax revenue. We want to keep in place, are we making it as a decision on the types of businesses we want to attract and grant licenses to versus giving and not giving licenses. Stunkel said, I think the cap also is a way of being fair and consistent. The council seems to be split on yes no. On one given day, the yes' don't show up the no's win the next time somebody has theirs brought up in front of the board and the yes show up and the yes win. That's not fair and consistent. Connor said, It's not, and it doesn't allow people to be predictable about who and will not obtain a liquor license. I think you want predictability and consideration of the type of business creation your going to see. What's going to happen to the community as a result of what you are considering. Connor said, the real question Steve, is if you do this where you pop a couple of things over to an H, you're not avoid the discussion of the J's, because those two J's would close. I think the order of things you will see is the creation of two new H's, a reclassification maybe by agreement from Discount Tobacco, the closing of two J's and then an ordinance considering the reopening of two J's. Barker said, that is what we've always done. I don't see a problem with that, but it's the time to correct basically what I see is our initial error. Mayor Gottman said that this is not an error, keep in mind when you walk in Discount Tobacco you walk into a tobacco store and

then you go into another part of a building which is a separate room for the gaming. Connor said, which was sold to us. Barker seemed to think that the classification was in error, because if we would have looked at it as a parlor like they are being called such as Daphne's or Spin 2 Win you walk right into the parlor. You don't have to go through another business to get to it. Connor said, I see what Mayor Gottman is saying, if we would have had the benefit of hind site we wouldn't have done it maybe this way. Connor said, so here is my question, because I don't fully understand it, I get that Willy's is an H and I get that they only wanted to only pour beer and wine in a restaurant setting, but don't we have that in other classes. Aldermen agreed that we do but Barker said that those other settings are classified E, they do hard liquor as well that's the only distinguish between the two.

Paslay told the council that the J's use to be A's because Pizza Hut had only a pour license and then when it came to license renewal in July, we made the decipher of J, Discount Tobacco checked on their liquor application that they wanted to be a J license. They knew what they were applying for. So, that's when we did it at the time and they only wanted to do gaming parlors with beer and wine. Connor said, I don't understand why Willy's wouldn't be an A. Paslay said A was strictly just beer. Pizza Hut was just beer. Willy's wanted beer and wine. Connor said, so we don't have a B at all? Theoretically there could be a Class B license that would be beer and wine in a restaurant setting that would look a lot like a Pizza Hut license only it would be a Willy's and would function in that role with no liquor attachment. If your gonna create a class of license that is aimed at a type of business, my preference would be to see a Class H that essentially calls it retail sale component. Barker said, we are not adding anything any different then we already have, we are just retitling two businesses into one of the other licenses that we already have. Connor said, I would encourage you if your going to call that H, a retail call it retail. I would take out ale, stout and lager they are all types of beer, I would say the sale of beer and wine when accompanied by a retail sale component that generates some level of retail sales tax. So, that's an H, Willy's goes somewhere else whether that is A or a newly invented B that is just beer and wine. Let's say you successfully got Discount Tobacco to move into an H, I doubt seriously what they are called but let's say we move them into the category H, then you would have the discussion of any new J's that would want to come into existence. Which you have a bit of a backlog right now. You have interest in J's. The council could have interest in whatever it wants. If an applicant comes before you and say's I want a J license the council can say well, I'm Steve Barker and I represent Ward I and the way that I see it I would entertain the existence of a new H, because that comes with the following things that I want to see within the City of Vandalia. Lester said, there needs to be some language change. Lester asked, why is it even necessary to have a Class A license. Why can't A fall under beer and wine? Connor said, that is an interesting question Andy, how did a license come into existence that was beer only and whether this council thinks there will ever be a need for a beer only. Mayor Gottman said, that came up a very long time ago under the Walker administration when Pizza Hut came in and only wanted beer. If your gonna do that just do beer, wine and ale. Why create another license. Connor said, that's up to you, this council. There is no problem with simplifying that process. Your coming at it as realists. Unfortunately, as elected officials that generally falls to your legislative arms, if you want to do this. However, understand you will be responsible for the proliferation of that alcohol you then place the burden squarely in the feet

of your liquor commissioner with regards to enforcement. When you begin changing the classifications and allowing the proliferation of alcohol you may have unruly liquor licenses. Lester asked, how do we reclassify the tobacco stores if we don't require them to have a separate entrance. Mayor Gottman said they do have a separate entrance. Lester said, I don't know how you move them to a different classification if you don't require them a separate entrance. Connor said, I would say the retail sales component or "non-food sales". Food is a defined term. Stunkel said, we are waiting on two that we tabled do we put them under a different category. How do we feel on that? Lester said, I don't see how moving tobacco shops to another classification solves the problem that many other retail businesses could not fall under that same description. Stunkel said, they could do that right now. Lester said, that Class J license needs to have some verbiage in there that they need a separate entrance. The tobacco shops can be grand-fathered in till the liquor licenses expire on July 1st.

Hobler said, I think we messed up somehow, and I believe I was on the council when this was done. Mainly the idea of it was to limit it to gaming in his opinion as I recall to restaurants, bars that sort of thing. I think we dropped the ball. Somehow, we messed up, it was the beginning process possibly of all this and it's got to be limited somewhere. How we correct it, I'm not really sure. Barker said, the 4 J licenses that was set forth is fine, but those 2 meaning Discount Tobacco need to be put under a different category. Mayor Gottman said, that those two would close if we pulled out those two. Barker said, well I'm saying assign them to another one and give them their license in the proper category. Hobler said, how did we even allow them to have one to begin with. Hobler said, I don't think we should have a liquor license with a retail business. I don't want to close these guys down. I think when their license expires in July issue them in a proper category. Lester said, I agree with Hobler either they get grandfathered in for awhile or go to another classification. The council needs to protect themselves against such places as a barber shop or whatever. Crawford said, the only protection against that is the council.

Stunkel and Crawford were both interested in what other tobacco shops have done in this situation. Paslay said that Discount Tobacco has the same set-up in other locations. Mayor Gottman said that we can get ahold of other communities and see how they are handling that.

Barker said, there again if these two licenses were open up, this gentleman here, Lester Kretz has a definite interest in investing in Vandalia. He's been to every meeting since he applied for this thing. We should give him due consideration. Crawford said, the gaming commission really backs every town into a corner by tying this to alcohol. They wanted to open up the gaming in the state but did not want to claim full responsibility so they shuffled it off to municipalities.

Brosman said, it boils down to the majority of the eight council members feel is the right thing whether or not gaming allowed in a retail establishment whether or not we have more than enough free-standing gaming parlors or afraid that will become over saturated.

Hobler recommended that we classify this tobacco shop retail and make a separate license with the understanding that when they go out of business that we no longer do retail liquor license.

I'm guessing at the next meeting it will be brought up before the council therefore the two J's will have to be closed but opening the two new J's. Connor said, my off the cuff response would be, you create the new classification open the new classification if it's prior to the expiration of the current license, it will have to be with the agreement of the license holder that you would reclassify those licenses. You would reclassify into the two open where you were going to put them you would next then vote on closing the two J's, I don't know if there would be anything else in between but then opening the two new J's would happen only at the closing of the prior two. Connor said, I realize you may want to skip that step, I would strongly encourage you not to, because it will look like your shuffling liquor licenses around instead of opening and closing. If a business moves out of that license that license closes. You then consider if you want to open a new one.

Mayor Gottman said, I think we need to look at what these other tobacco stores are doing throughout the state, to see how they are issuing there's and then come back and discuss it a little bit more. We need more information. The council was in agreement to do so. Mayor Gottman said, the State Liquor Commission because that is the final authority.

Connor said, one strong addition that we have to make this year and have talked about in the past and have not done is add the on the record hearing component to the code to allow any liquor dispute that ultimately comes before the liquor commission. That particular ordinance allows you to if you do have a liquor control hearing here the transcript of that hearing counts as the hearing in front of the state liquor commission. Ultimately that's where these disputes go. We don't want to do anything that would place us in a situation where when that gets to the Illinois Liquor Commission our ordinance for whatever reason doesn't pass anything. That would be damaging to any action we try to take against the licensee.

Mayor Gottman opened the meeting to the public for their input. Tim McMillan owner of CT's Package Liquor, Inc. asked if you are reclassifying and I wanted to apply for a license what classification would I fall under. Would it be retail? Hubler said, he has a separate building along with a garage. Mayor Gottman said that Greenville has gaming in their liquor stores. McMillan has a building behind his building that he can make a passage through. Is that correct Tim? Tim said, yes. Barker said, that would be a separate entrance. Crawford said, that would be like what Hobler brought up, where that particular class is for those two tobacco stores, we would probably have to create one for package liquor stores specifically for you and Mach 21 if they would want one. Lester Kretz, Kretz, Inc. told the council that the parlors as they call them they are under the State of Illinois classification as bars. We have to go by every rule that a bar is, because these parlors slid in under the State of Illinois Act, somebody put a little bar in and here we're gonna start this and this is how it works so the State of Illinois liquor commissioner labeled us under bars. That's what we are labeled under. Mayor Gottman asked Mr. Kretz, so you could sell hard liquor and he said, yes. Mark Meadows, PMK, INC. D/B/A Daphne's said, you're talking about Discount Tobacco is not a parlor they needed a beer and wine liquor license to do gaming so ultimately, they are. Even though they sell a little retail they are. Now, if I would apply for a J and got turned down can I sell some magazines and get the same and get an H? One other question, if you move two to the H, is it the same as raising the J's to four? To

make room for two more in J? Barker said, we would have two openings. You guys are considered one of them. Mayor Gottman said, immediately they would go into closure. Then you would have to apply. Crawford asked do we marry ourselves to that four? Thereby having to create the new classification for the Discount Tobacco or do we say these two are a good idea, why don't we have six now? The four was just a suggestion. Lester said, the comment on the observation that Meadows made regarding tobacco shops, like I was using the flower shop as an example anyway any kind of retail based on the mistake we made with the tobacco shops at their request. There not a bar and there not a restaurant. So, they need to be isolated either in another class suggested or grandfathered in so when they close their business that particular set up is gone.

Mayor Gottman said we have some information to gather from there we will make some decisions.

A motion was made by Lester and seconded by Hobler to adjourn at 4:15 p.m.


CITY CLERK