

SPECIAL MEETING OF THE CITY COUNCIL  
CITY HALL, Fifth Floor  
6801 Delmar Blvd.  
University City, Missouri 63130  
**July 31, 2017**  
**5:00 p.m.**

**A. MEETING CALLED TO ORDER**

At the Special Session of the City Council of University City held on the fifth floor of City Hall, on Monday, July 31, 2017, Mayor Shelley Welsch, called the meeting to order at 5:00 p.m.

**B. ROLL CALL**

In addition to the Mayor, the following members of Council were present:

Councilmember Rod Jennings; *(arrived at 5:06pm)*  
Councilmember Paulette Carr; *(via Video Conference)*  
Councilmember Steven McMahon  
Councilmember Terry Crow  
Councilmember Michael Glickert  
Councilmember Bwayne Smotherson

Also in attendance was Tina Charumilind as Acting City Manager

**C. APPROVAL OF AGENDA**

Mayor Welsch stated requested the votes for the 2 liquor licenses be moved to the City Manager's Report where they normally reside.

Hearing no other request to amend the Agenda, Mayor Welsch proceeded as follows:

**D. PROCLAMATIONS**

**E. APPROVAL OF MINUTES**

**F. APPOINTMENTS TO BOARDS & COMMISSIONS**

**G. SWEARING INTO BOARDS & COMMISSIONS**

**H. CITIZEN PARTICIPATION - (Total of 15 minutes allowed)**

**I. PUBLIC HEARINGS**

**1. Liquor License for the Mad Crab Restaurant**

Mayor Welsch opened the public hearing at 5:01 p.m. Hearing no requests, Mayor Welsch closed the public hearing at 5:01 p.m.

**2. Liquor License for the Taco Buddha Restaurant**

Mayor Welsch opened the public hearing at 5:01 p.m. Hearing no requests, Mayor Welsch closed the public hearing at 5:01 p.m.

**J. CONSENT AGENDA**

## **K. CITY MANAGER'S REPORT**

### **1. Approve Liquor License for the Mad Crab Restaurant (8080 Olive Blvd.)**

Councilmember Glickert moved to approve, it was seconded by Mayor Welsch.

Councilmember McMahon stated that the ordinance indicates the recommendations need to come from citizen residents and it appears some of names on the application may not qualify. He posed the following questions:

- I. The second name listed on the application is Seafood City Inc. (Alex Fung), he asked if Alex Fung is the actual owner and if he lives in the City or not? Also on number two; the answer to the question regarding any reason to refuse the applicant a license to sell intoxicating liquor is marked "yes"; is that correct?
- II. The third name listed on the application is the Olive Supermarket; although they may be interrelated with other corporations is this the same person/owner?
- III. The fourth name on the application is Wonton King, the owners name is unclear; so is it the owner or manager? The question regarding a reason to refuse the license was not answered.
- IV. The fifth name on the application is Wei Hong and it's the same situation as number four.

Councilmember McMahon stated again that he is not sure these recommendations comply with the ordinance. He stated that he shared his concerns with Councilmember Glickert last Friday when the request to have an expedited hearing was received.

Councilmember Glickert stated that he had spoken with the Interim, Interim City Manager and thought everything was squared away. He stated that unfortunately historically we have let this portion of the application slip; we have had people that did not live in University City sign off on liquor licenses in the past. If in the future we need to have only citizens living around the establishment sign off; we will need to tighten the process up.

Councilmember Carr stated other liquor license requests have been postponed until they are completed; there are several answers that are questionable or missing all together. She advised that she does not feel Council should waive this questions; everything should be in order. She believes the questions can be cleared up and the next meeting is only a couple of weeks again. It's regrettable that no one took action between last Friday and now; she would like to vote yes but she will not do so unless this portion is corrected.

Ms. Charumilind stated that she did not look at St. Louis County's website to confirm the business owner listed is actually the person that owns the property or if they reside in U City.

Councilmember Crow stated that between the applicant and staff, by the time it gets to Council all of this should be done already.

Whether its staff or the applicant or whomever, it looks as if we do not have residents signing off on this and our ordinance states that it is required. He would love to help but this is not his responsibility, it's the applicants and staffs responsibility. It looks like we do not have residents of the City making the recommendations on this application. He would like to know if someone can tell him if the five folks listed meet the test of our ordinances and if they don't it will have to come back in 2 weeks.

Councilmember Glickert stated that he did not want to come back in 2 weeks; he would really like to see a business owner in University City get a beer and wine license now. The restaurant is doing a very brisk business, and he believes this has happen before and we could have a variance in this process whereby we can approve the license and have the applicant get the information that Council needs afterwards. It's only 3 or 4 names that are needed. Councilmember Glickert asked the Mayor if Mr. Van Ho could come forward to answer Councilmember Crow's question; Mayor Welsch asked Mr. Van Ho to come forward to the mic.

Councilmember Crow asked Mr. Van Ho the following questions:

- I. Liling Wemhoener appears to live in U City so that signature is good.
- II. Is Alex Fung of Seafood City a resident of University City? Mr. Van Ho stated he did not know. He stated Mr. Fung is his landlord and owns Seafood City.
- III. Is the owner of Olive Supermarket Inc. a resident? Mr. Van Ho stated he did not know but that he owns the market across from Seafood City.
- IV. Is the owner of Wonton King a resident? Mr. Van Ho stated he did not know if the owner lives if U City.
- V. Is the owner of Wei Hong a resident? Mr. Van Ho stated he did not know if the owner lives if U City.

Councilmember Crow stated that he had asked these questions about residency last week. He doesn't think a variance has ever been done when 4 of 5 recommendations have not been shown to be residents. He would love to help out, but this is the applicant and staff's responsibility. By the time we get to this stage, staff should have already signed off and said residency has not been verified. And today the applicant cannot provide confirmation. So what choice does Council really have?

Mayor Welsch asked Mr. Charumilind if there are any other choices? Ms. Charumilind stated that in the past, staff did not really check the St. Louis County website for residency verification. When applicants or business owners receive the application staff explains the procedure to them. In general people have lived or done business at these locations for 10 or 17 years we assume. Ms. Charumilind knows the names and knows that they have done business in our City for a number of years.

Councilmember Crow stated that's not what the ordinance says. Ms. Charumilind asked what if they own the properties?

Councilmember Jennings stated that regretfully he has to concur with Councilmember Crow. There are not enough residents on the application. These are all fine business owners but this is a technical thing and you really need to go back and correct it.

It looks as though the will of the Council is not to pass this as a variance so a special meeting will be needed once you have the signature or it can be brought back in 2 weeks at August 14<sup>th</sup> meeting.

Councilmember Carr stated that she adamantly against going against an ordinance and she cannot remember when there has been a variance. Staff was given notice on last Friday and the meeting was called on Friday to best of her knowledge. Councilmember Carr moved to postpone approval until the next meeting. The motion was seconded by Councilmember Jennings.

Councilmember Jennings asked the applicant to help make the application more legible by printing the names so it's clear who the folks are. He stated he had been to the restaurant and had a wonderful meal and looks forward to continuing to do business.

Councilmember Smotherson asked if both or one application was being addressed. The Mayor replied the motion is just for the Mad Crab.

The motion to postpone approval of a liquor license to the Mad Crab Restaurant until the next meeting August 14<sup>th</sup> passed unanimously.

Mayor Welsch apologized to Mr. Van Ho and asked that he come back on the August 14<sup>th</sup> with the 5 residential signatures.

Mayor Welsch said for record, Councilmember Crow has mentioned a number of times that we need a review of this process and she really thinks we need to get that done. We are asking people to vouch for the character of the applicant and basically anyone new coming into U City who do not know U City people, will be asking people to sign off and vouch for an applicant or people they may not know. She believes the second paragraph of the application is poorly written. When she was first of the Council a creditable real estate property tax paying citizen was the person vouching for the character of the applicants. She does not think in the past they have always been residents of University City, and this has to be clarified. If we need to carefully review the ordinance, we should do that and go through the process that Councilmember Crow has asked for a number of times.

As it is, this may keep people out of University City if they don't know people who will vouch for their character. We should look at their professional requirements; rather or not they've had a license before, their sales taxes, etc.

**2. *Approve Liquor License for the Taco Buddha Restaurant (7405 Pershing Ave.)***

Councilmember McMahon moved to approve, it was seconded by Councilmember Crow.

Mayor Welsch asked Mr. Eller where Lynn Eastin (#5 signature) lives? No address was provided on the application. Mr. Eller stated that Lynn lives on Alta Dena Court and he has known her for 1 year and 4 months.

Councilmember McMahon stated he had called Mr. Eller earlier to give a heads up on the missing address; according to St. Louis County property records Ms. Eastin's address is 416 Alta Dena Court.

The motion to approve the liquor license for Taco Buddha passed unanimously.

**L. UNFINISHED BUSINESS**

*BILLS*

**M. NEW BUSINESS**

*RESOLUTIONS*

*BILLS*

**N. COUNCIL REPORTS/BUSINESS**

**1. Boards and Commission appointments needed**

Mayor Welsch announced the appointments that were needed.

**2. Council liaison reports on Boards and Commissions**

**3. Boards, Commissions, and Task Force minutes**

**4. Other Discussions/Business**

**O. CITIZEN PARTICIPATION (continued if needed)**

**Jan Adams, 7150 Cambridge Ave, University City, MO**

Ms. Adams stated that a few weeks ago she had submitted a status report on some of the litigation pending against University City. She reported that it was her understanding that the action challenging the legality of Mr. McMahon's claim to the office of Council member for Ward 1, after April, 2017, was dismissed on a procedural issue and that the claim would be re-filed. Tonight she was there to report that, in fact, the Petition for Declaratory Judgment has been re-filed. She also wanted to correct the apparent misrepresentation of the laws that govern this case. It is her understanding that some lawyer has informed some members of this Council that the votes that Mr. McMahon casts after April 30, 2017, are valid and would be upheld in a Court of law. That is not true.

She has also been informed that the City Attorney believes that if he can delay any adjudication of this case until after April, 2018, that the issue will be moot. This is also not true. Taxpayers have a remedy to right any wrongs whenever this matter is finally adjudicated. So the delays and the attorney's fees for the delays are a waste of taxpayer's money.

She stated for her legal opinions, she relies on the McQuillin Municipal Corporation Treatise and the Corpus Juris Secundum, , as well as the Westlaw publication on "Local Government and case law from the State of Missouri. She is attaching to her comments the relevant excerpts from her research so that it can be provided to any attorney who has a different opinion. She updated her research today and can say that the law cited has not been overturned.

She read a few excerpts from her research; "the reason for validating the acts of a de facto officer does not exist if the public and third persons are aware of defects in the officer's title and are consequently not deceived". "A person who assumes without authority to exercise official powers ordinarily does not become an officer de facto if his authority to exercise by such powers is promptly challenged"; which it has been in this case.

"The doctrine does not protect members of the public or third parties who were aware of the defects in the officer's title. So, too the doctrine does not protect the de facto officer who acts for his own benefit".

“The reason for validating the acts of a de facto officer does not exist if the public and third persons are aware of defects in the officer’s title and are consequently not deceived”. “Expiration of the term dose not abate the pending litigation”.

To be clear any action taken by this Council based on 4-3 vote in which Mr. McMahon votes with the majority, after April 30, may be overturned by the courts. Furthermore, the Courts have ordered the offending officer holder to pay attorney’s fees, court fines, and reimbursement to the City for misappropriated funds. Mr. McMahon has suggested that he is in favor of breaching the contract with Gateway Ambulance. That could prove to be very expensive. This Council has a sworn duty to be prudent and good stewarts of taxpayer funds, so you should not be funding a flawed legal defense based on some other lawyer’s misrepresentations. She asks that a copy comments and the attachment be attached to the minutes.

**P. COUNCIL COMMENTS**

Councilmember Glickert thanked Council for moving quickly with this issue of the liquor license approvals. He then stated that over the weekend the diving and slide areas of the pool were closed on Saturday. The reason for the closure was a shortage of guards; he asked Ms. Charumilind to get back to Council to let them know what happen. He understands that historically August falls short as the young people go back to school and sports but this is still July. He is worried that we outsourced with Lifeguards Unlimited, but they seem to be limited. The weekend is high peek time and he would really like to the slide open for the residents. Ms. Charumilind stated she would get back to Council with more information.

**Q. ADJOURNMENT**

Mayor Welsch thanked everyone for their attendance and closed the City Council meeting at 5:26 p.m.

LaRette Reese  
Interim City Clerk

Council Comments  
July 31, 2017

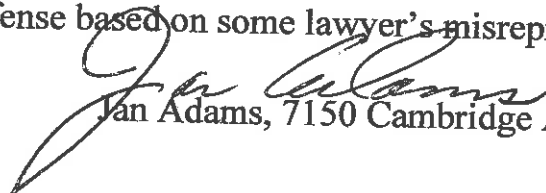
A few weeks ago, I submitted a status report on some of the litigation pending against University City. I reported that it was my understanding that the action challenging the legality of Mr. McMahon's claim to the office of Council member for Ward 1, after April, 2017, was dismissed on a procedural issue and that the claim would be re-filed. I am here tonight to report that it, in fact, that Petition for Declaratory Judgment has been re-filed.

I am also here to correct an apparent misrepresentation of the laws that govern this case. It is my understanding that some lawyer has informed some members of this Council that the votes that Mr. McMahon casts after April 30, 2017, are valid and would be upheld in a Court of law. That is not true.

I have also been informed that the City Attorney believes that if he can delay any adjudication of this case until after April, 2018, that the issue will be moot. That is also not true. Taxpayers have a remedy to right any wrongs whenever this matter is finally adjudicated.

For my legal opinions, I rely on the McQuillin Municipal Corporation Treatise and Corpus Juris Secundum, as well as the Westlaw publication on "Local Government" and case law from the State of Missouri. I am attaching to these Comments, the relevant excerpts from my research so that you can provide this to any attorney who has a different opinion. I updated my research today and can say that the law I have cited has not been overturned.

To be clear, any action taken by this Council, based on a 4-3 vote in which Mr. McMahon votes with the majority, after April 30, may be overturned by the Courts. Furthermore, the Courts have ordered the offending office holder to pay attorney fees, court fines, and reimbursement to the City for misappropriated funds. Mr. McMahon has suggested that he is in favor of breaching the contract with Gateway Ambulance. That could prove to be very expensive. This Council has a sworn duty to be prudent stewards of taxpayer funds, so you should not be funding a flawed legal defense based on some lawyer's misrepresentations.

  
Jan Adams, 7150 Cambridge Ave.

§ 12:161. Acts, 3 McQuillin Mun. Corp. § 12:161 (3d ed.)

3 McQuillin Mun. Corp. § 12:161 (3d ed.)

McQuillin The Law of Municipal Corporations | July 2017 Update

Chapter 12. Elections, Offices and Officers, Employees and Agents and

Municipal Departments

VII. De Facto Officers

“The acts of an officer de facto, although that officer’s title may be bad, are valid so far as they concern the public or third persons who have an interest in the thing done.

...The official acts of de facto officers are validated only from motives of public policy to preserve the rights of third persons and the organization of society.

***...However, the reason for validating the acts of a de facto officer does not exist if the public and third persons are aware of defects in the officer’s title and are consequently not deceived.***

...and de facto officers are not permitted to benefit personally from what is legally a usurpation of office.”

67 C.J.S. Officers § 461

Corpus Juris Secundum | June 2017 Update

Officers and Public Employees

Francis C. Amendola, J.D., James Buchwalter, J.D., Lonnie E. Griffith, Jr.,

J.D., Sonja Larsen, J.D., Stephen Lease, J.D., William

Lindsley, J.D., Eric Mayer, J.D., Jeanne M. Reiser, J.D.

X. De Facto Officers

§ 461. Color of title—Acting without qualification; unauthorized assumption of office

An Occupant of an office who has exercised the powers thereof for a considerable period of time, with the acquiescence of the public authorities and the public, may be an officer de facto.

***However, a person who assumes without authority to exercise official powers ordinarily does not become an officer de facto if his authority to exercise such powers is promptly challenged.***



**2 Local Government Law § 10:24**

**Local Government Law | May 2017 Update**

**John Martinez**

**Part II. Local Government Organization and Processes**

**Chapter 10. Personnel Matters**

**By John Martinez**

**II. Merit Selection**

**§ 10:24. Irregular installation, ratification, and de facto status**

The true reason for the de facto doctrine is to promote stability of expectation with respect to official acts by protecting the rights of the public and third parties who have relied upon the apparent authority of the officer. Accordingly, the doctrine does not protect members of the public or third parties who were aware of the defects in the officer's title.

So, too, the doctrine does not protect the de facto officer who acts for his own benefit. The American Doctrine of Judicial Review under which courts may declare statutes unconstitutional and the createdness of local government units which are empowered to do only that which their creator authorizes are sometimes invoked as counterweights to the public policy considerations upon which the "de facto" doctrine rests.

The better approach is to determine whether the protection afforded to innocent third parties and the public at large by the "de facto" doctrine is sound under the totality of the circumstances in the particular case rather than through the manipulation of abstractions like "void" and "voidable."

The trend toward scrutiny of the circumstances of the particular case as the touchstone for decisions can be seen in cases in which the officer seeks recovery of compensation for services rendered during the defective tenure of office. Although some courts deny recovery when the statute under which the services were rendered is adjudged unconstitutional or the occupation of the office is otherwise void, the better rule is to award or deny recovery to de facto officers based on whether the occupancy was in good faith, at least when there is no other claimant for the sum in question.

Even where a de facto officer may not sue to recover salary withheld from him, he may keep any salary he has received in good faith occupancy of the office.

*Alleger v. School Dist. No. 16, Newton County, 142 S.W.2d 660 (Mo. Ct. App. 1940)*

However, the reason for validating the acts of a de facto officer does not exist if the public and third persons are aware of defects in the officer's title and are consequently not deceived.

*Bogges v. Pence, 321 SW2d 667 (Mo. 1959)*

Expiration of the term does not abate the pending litigation.