

City of Milwaukee Licensing Board

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**Hilton Garden Inn and Suites**

**Petitioner,**

v.

**Ladybug Club,**

**Respondent.**

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**MOTION FOR THE RECUSAL OF ALDERMEN JOE DUDZIK AND JOSE PEREZ FROM ALL MATTERS OF DECISION BY THE LICENSES COMMITTEE AND THE COMMON COUNCIL AS TO THE LADYBUG CLUB LICENSING**

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**I. INTRODUCTION**

This matter is scheduled to come before the City of Milwaukee Licensing Committee on October 18, 2013 at 10:00 a.m. relative to a Complaint filed by the Hilton Garden for revocation of the Ladybug Club's license, pursuant to Wis. Stat. §125.12. Based upon considerations of due process, the Ladybug Club requests that Aldermen Joe Dudzik and Jose Perez recuse themselves as members of the Licensing Board and any vote at the Common Council, which is to render a recommendation and decision on whether to revoke the license of the Ladybug Club based upon the allegations of the Hilton Garden's Complaint.

**II. REQUEST FOR RECUSAL ON DUE PROCESS CONSIDERATIONS**

"It is, of course, undisputable that a minimal rudiment of due process is a fair and impartial decisionmaker." *Guthrie v. Wisconsin Employment Relations Com'n*, 111 Wis.2d 447, 454, 331 N.W.2d 331 (1983). "If the decisionmaker is not fair or is not

impartial, due process is violated.” *Id.* This “rule applies to administrative agencies which adjudicate as well as to courts.” *Id.*, quoting, *Withrow v. Larkin*, 421 U.S. 35, 46, 95 S.Ct. 1456, 1463, 43 L.Ed.2d 712.

The Ladybug Club is respectfully requesting that Aldermen Dudizk and Perez, recuse themselves in the above matter, both as members as the Licenses Committee making the decision whether to recommend revocation of the Ladybug Club’s license to the Common Council and as Common Council members voting on the final determination whether to revoke the Ladybug Club’s license.

On Monday, October 7, 2013, Aldermen Dudizk and Perez attended a neighborhood meeting held by the Downtown Neighborhood Association (hereinafter “DNA”) at the Marriot Hotel. During that meeting a presentation was given by Attorney Marc Christopher, counsel for the Hilton Garden Hotel, Petitioners in this matter, as to why the Petitioner is seeking to have the Ladybug Club’s license revoked. The information provided at this neighborhood meeting was not only bias and one-sided, it was also hearsay and extremely prejudicial to the Ladybug Club, without any degree of reliability or truth behind the statements made or information provided. Because the Aldermen were, unfortunately, subjected to this unreliable and one-sided information, the Ladybug Club asserts that the risk of bias upon these two decision makers is impermissible high. With regard to the potential impermissible bias of decision makers, the Wisconsin Supreme Court has stated:

This does not mean, however, that due process can be violated only when there is bias or unfairness in fact. **There can also be a denial of due process when the risk of bias is impermissibly high.** *Withrow* pointed out that not only is a biased decisionmaker unacceptable, but our

system of law has always endeavored to prevent the probability of unfairness.

*Guthrie*, 111 Wis.2d at 454. (emphasis added)

While Aldermen Dudizk and Perez had no reason to have any particular bias prior to attending the neighborhood meeting, the presentation made by counsel for the Hilton Garden could have done nothing but impose a bias on these two Aldermen. Aldermen Dudizk and Perez heard a presentation that was not subject to cross-examination or any other checks on the veracity or admissibility of those statements in a hearing setting. As a result, it is highly probable that Aldermen Dudizk and Perez have prejudged this matter to the disadvantage of the Ladybug Club. Specifically, the presentation provided in part:

- The Hilton Garden is seeking revocation of the Ladybug Club's license
- The Hilton Garden has invested some \$20 million into downtown Milwaukee,
- The Hilton Garden has created some 80 jobs in downtown Milwaukee,
- The Hilton Garden has lost tens of thousands of dollars because of its proximity to the Ladybug Club, including but not limited to the cost of hiring additional security for its clients' safety, providing rooms free of charge to guests who can't sleep because of the noise from the Club.

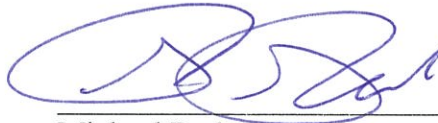
These statements were made in order to sway people at the neighborhood meeting that the Ladybug should have its license revoked because it is an annoyance to the Hilton Garden and its business and thus should be removed. Clearly the message of the Ladybug Club was that they have put a lot of money into their hotel in Milwaukee and therefore, if they want the Ladybug Club to shut down the City should do it, without any consideration to the legality of such action. Anyone having heard this presentation is likely to have made a determination or prejudgment that the Ladybug Club should not be

permitted to stay in business. This however, is not the standard by which decision makers are to determine whether or not the Ladybug Club is entitled to retain its license.

People at the neighborhood meeting, including Aldermen Dudizk and Perez, did not hear any information from the owners of the Ladybug Club itself. As a matter of fact, the owner of the Ladybug Club was not invited to attend the meeting, despite the fact that the representatives of the Hilton Garden and their attorney were invited to make a presentation at the meeting. So the information provided to those at the meeting was clearly bias and one sided. As a result, the Ladybug Club is respectfully requesting Aldermen Dudizk and Perez to recuse themselves from any position in which they would make a decision or vote as to whether or not the Ladybug Club should retain its license.

Dated this 17<sup>th</sup> day of October, 2013.

MAISTELMAN & ASSOCIATES, LLC



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