CITY OF MILWAUKEE

Form CA-43

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To the Honorable Common Council
of the City of Milwaukee
City Hall, Room 205

Re: Review as to Legality and Enforceability of File No. 020902
Substitute 1, Relating to the Application Procedures for Various Alcohol Beverage and Tavern-Related Licenses

Dear Members:

This proposed ordinance does three things:

1. It deletes the requirement that applications for Class "B" Tavern extension of premises be filed at least 10 days prior to the date of their being granted by the Common Council;

2. It specifies that for new applications, only Class "A" and "B" Retail and Class "C" Wholesale licenses need to be referred to the Utilities and Licenses Committee for recommendation. It thus deletes the necessity of referring those individuals who are seeking Class "B" Managers and Class "D" Operators (bartender) licenses and;

3. Creates a streamline review procedure for those seeking renewals of Class "A" and Class "B" Retail and Class "C" Wholesale licenses after they are referred to the Chief of Police, the Commissioner of Health, and the Commissioner of Neighborhood Services.

For the reasons set forth below, we believe that these proposals conflict with other portions of Chapter 90 of the Milwaukee Code of Ordinances and are therefore not legal or enforceable.

THE PROPOSAL RELATING TO EXTENSION OF PREMISES

Section 125.51(3), Wis. Stats., and its various subparts dealing with "Class B" licenses deal with the issue of premises. Essentially, operation of a "Class B" license not on the premises described is prohibited. Section 125.04(3)3. requires on the initial application, a description of the premises to be licensed for the retail sale of alcohol beverages. Section 125.04(3)(f)2. allows the governing body of a municipality in a county of 500,000 or more to set a time prior to granting a license that it shall be on file. While the statute does not appear to prohibit a governing body

from deleting altogether the requirement of having an alcohol beverage application on file prior to the granting of such a license, the statute seems to envision some time that the application for an alcohol beverage license should be on file prior to the time that it is granted.

Absent § 125.04(3)(f)2., applicable only to municipalities in counties having a population of 500,000 or more, the minimum filing requirement mandated by Chapter 125 is fifteen days that an alcohol beverage license application is on file prior to its being granted.

The City of Milwaukee using its authority as contained in Section 125.10(1) has enacted Section 90-1-22 of the Code of Ordinances defining the word "premises" to mean " . . . the area described in a license." Section 90-4-7.8 deals with temporary extensions of Class "B" Tavern license premises for special events. Section 90-4-7.8-8 provides:

> "The granting of a temporary extension of a Class "B" Tavern licensed premises for special events shall authorize the licensee to sell or serve intoxicating liquors or fermented malt beverages during the period of time and in the area described in the application for such temporary extension, as expressly approved by the Common Council. Such authority, however, shall be contingent upon the licensee also obtaining any and all other special privileges or permits required for the conduct of the special event for which the temporary extension of the licensed premises is sought."

The proposal would amend Subsection 5 of Section 90-4-7.8 to delete the 10-day filing requirement prior to the date of granting by the Common Council. Therefore, a tavern operator could seek a temporary extension the morning of the day that it is granted by the Common Council. We are informed that this is done to facilitate special events for which bar operators frequently do no make application for the temporary extension until shortly before the event date. We are further told that this thereby causes the Utilities and Licenses Committee to have to hold special five minute meetings immediately prior to the regular Common Council meeting in order to facilitate temporary extension applications particularly during the summer festival season. This usually includes Riversplash, Bastille Days, The Great Circus Parade, and the Harley Davidson festivals.

Section 90-5-3-a, MCO, provides as follows:

> **3. TIME OF FILING; LEGAL NOTICE AND FEE.** a. Filing Time. Application shall be filed for **all liquor and beer licenses** at least 30 days prior to the date of granting by the common council. When application has been on file at least 14 days prior to the date of granting, and the police investigation has been completed with no police objection, and there are no other objections to the

> granting of the license, the common council may grant such licenses prior to the passage of the whole 30 days. (Emphasis supplied).

It would appear that there is a need to reconcile the existing subsection 5 of § 90-4-7.8 (the current 10-day filing requirement) and § 90-5-3-a (the 30/14 day filing requirement). In the event the 10-day filing requirement is deleted altogether by action of the common council, there will still be a need to reconcile § 90-4-7.a and § 90-5-3-a.

By the deletion of the 10-day notice requirement, abutting property owners who have objections to temporary extensions may have effectively been denied notice of the intended temporary extension. For example, the last five years a number of taverns in the 12th Aldermanic District sought temporary extensions for parties that coincided with Summerfest and Harley Fest. Their objections went to noise, litter, unruly and intoxicated patrons and numerous acts of public urination. If the taverns seeking the temporary extensions could have effectively foreclosed a meaningful hearing at the Utilities and Licenses Committee, the objecting neighbors would have been left to seeking emergency review under § 125.12(2)(d), Wis. Stats. One of the purposes of Chapter 125 is for the governing body of a municipality to make intelligent decisions regarding the granting of any kind of liquor or malt license. Additionally, by forwarding such applications directly to the Milwaukee Common Council, without modifying the language of Section 90-5-3, the Milwaukee Common Council may be in violation of its own ordinances. With some effort at reconciling these ordinances, we conclude this portion of the proposal as drafted, is not legal or enforceable.

THE DELETION OF THE REQUIREMENT OF SENDING CLASS "D" OPERATOR (BARTENDER) LICENSES TO THE UTILITIES AND LICENSES COMMITTEE

The proposal would also amend Section 90-5-1-a of the Code of Ordinances. The current version of Section 90-5-1-a requires that all licenses issued pursuant to Chapter 90 of the Milwaukee Code of Ordinances except short-term Class "B" special fermented malt beverage licenses shall be made to the City Clerk in writing on forms furnished by the City Clerk. The provision then goes on to set forth exactly what the application shall contain. Additionally, section 90-5-8 of the Milwaukee Code of Ordinances requires that the Utilities and Licenses Committee " . . . **shall** hold a hearing on whether or not to issue **each** new license . . ."

Clearly § 90-5-8 should be amended to conform to the anticipated exception to be made for Class "B" Managers and Class "D" Bartenders.

The proposed version of Section 90-5-8-e-1 of the Code of Ordinances specifies that applications for Class "B" Manager's licenses or Class "D" Operators (bartenders) licenses shall be referred to the Chief of Police for review. It further states that if the Chief of Police has no objection to

the license, the license shall be forwarded to the Common Council for approval. It thus, deletes the requirement of the Utilities and Licenses Committee holding a hearing on Class "B" Managers as well as Class "D" Bartenders if the Chief of Police has no objection. If, however, the Chief of Police has an objection, it is forwarded to the Utilities and Licenses Committee for a hearing.

In our experience the only objections that are ever heard by the Utilities and Licenses Committee regarding Class "B" Managers and Class "D" Operator (bartenders) are those from the Chief of Police. By the nature of the type of license, it is not usually the subject of a neighborhood objection.

Section 90-4-4-a of the Code of Ordinances requires a Class "B" Managers license for each establishment holding a Class "B" Retailers license. Thus, a Class "B" Manager licensed at a particular premises cannot "travel" to other premises. Class "D" Operators (bartenders) are issued license for operating in any tavern within the confines of the City of Milwaukee.

We are informed that the purpose of this proposal is to eliminate the need of the Utilities and Licenses Committee seeing several thousand bartenders per year that have no police objections to their record.

We are in agreement with that approach for purposes of Class "D" Operator (bartenders) since their license is not premises-specific, and would not as a consequence ever have a neighborhood objection. However, in adopting this proposal the Common Council would also have to amend Section 90-5-8. Failure to do so renders the proposal inconsistent with Section 90-5-8 and therefore not legal or enforceable as currently drafted.

However, Class "B" Managers are premises-specific. And while it would be highly usual, we agree, to have a non-police department objection to the issuance of such a license, it nonetheless entirely conceivable because the Class "B" Managers license is premises-specific. As a result, any redraft of this proposal should deal with that possibility.

THE STREAMLINED REVIEW PROCEDURE FOR THOSE SEEKING RENEWALS OF CLASS "A" AND CLASS "B" RETAIL AND CLASS "C" WHOLESALE LICENSES.

Our analysis of the third portion of File No. 020902 is somewhat more involved.

We are informed that one of the purposes was to deal with the problem of the policy of the current Chief of Police in not filing what he refers to as "objections" to the renewal of a license. Rather, he files a "report," that frequently forms the basis of non-renewal or suspension of license. Yet, the Ordinances continue to refer to an "objection."

As we review the language of the proposed Section 90-11-3 of the Code of Ordinances, we do not find that issue addressed at all.

The current version of Section 90-11-3 requires the City Clerk to forward all applications for a license renewal to the proper licensing committee of the Committee Council for recommendation after reports are received from the Milwaukee Police Department, the Commissioner of Neighborhood Services and the Commissioner of Health indicating that the applicant still meets all of the licensing qualifications. The proposed Section 90-11-3 allows the application for license renewal to be referred to the Common Council immediately unless an "objection" has been filed with the City Clerk at least 30 days prior to the date on which the license was to expire. The proposed Section 90-11-3 specifically states that the objection may be filed by "any interested person." A review of Section 90-11-7-c of the Milwaukee Code of Ordinances sets forth the basis for denial of a license. Specifically, Section 90-11-7-c states:

> "Recommendation. C-1. The **recommendation of the committee** regarding the applicant must be based on evidence presented at the hearing. Povitive evidence concerning non-renewal may include evidence of:
>
> c-1-a.: Failure of the applicant to meet the statutory and municipal license qualifications.
>
> c-1-b.: Ending charges against or the conviction of any felony, misdemeanor, municipal offense, or other offense, the circumstances of which substantially relate to the circumstances of the particular licensed activity, on behalf of the licensee, his/her employees, or patrons.
>
> c-1-c.: The appropriateness of the tavern location and premises.
>
> c-1-d.: **Neighborhood problems due to management or location**.
>
> c-1-e.: Any other factor or factors which reasonably relate to the public health, safety and welfare."

(Emphasis supplied).

Not addressed at all in the proposed Section 90-11-3 of the Code of Ordinances is the simple reality that frequently, indeed very frequently, licenses are denied based upon neighborhood objections even if the police report contains no adverse information against the applicant, and even if the Department of Neighborhood Services and the Health Department have indicated no

objection to the renewal of the license. Further, notwithstanding this proposal, Section 90-11-7-c-1 still envisions a hearing before the Utilities and Licenses Committee.

Were the Council to adopt Section 90-11-3, serious question would be raised over whether or not the Milwaukee Common Council is in effect disenfranchising concerned and effected neighbors because no provision has been made under Section 90-11-3 to:

1. Allow them to even know that an application has been filed; and
2. To require that they must file an "objection" 30 days prior to the time that the license was to expire.

We believe that most neighbors have no idea as to when the license will expire for any particular premises. The only thing that many know is that the tavern or the patrons of the tavern are causing problems within the neighborhood and they will seek to have the tavern license not renewed or revoked. That has happened very recently with several taverns.

The reason why the neighbors would be disenfranchised, is because there is no notice provision allowing them to know when an application for renewal has been filed. Not only that, but under the proposal, any objection from them would have to be filed 30 days prior to expiration of a problem license. If they have not bothered to send their concerns to the Office of the City Clerk, but rather their alderman or the police department, there is no way they will know by where and by when they must file their complaints in order to have their neighborhood objection be timely and heard.

The situation gets even worse. The current Chief of Police has taken the position that under Chapter 125.04(5)1. all that the Chief of Police is required to do is check the records of the individuals, not "object." The Chief of Police is correct, unless the Common Council of the City of Milwaukee specifies in its ordinances that his/her "report" forms the basis of an "objection." Under this proposal a reasoned argument can be made that since the "report" of the Chief is not an "objection," even in the face of an adverse police report, the matter must go directly to the Council without a hearing before the Utilities and Licenses Committee! Worse still, under the language of the proposal, the Chief may have a report that could be viewed as an objection. If a clever licensee, who knows there will be an adverse report, files late, even the Chief's "objection" will not be filed prior to the 30-day time frame! Thus, the clever license applicant with a bad record, will delay filing to cause precisely such a lapse.

Additionally, the Commissioner of the Department of Neighborhood Services and the Commissioner of the Health Department have rarely filed what is referred to as "objection" to the renewal of any particular Class "A" or Class "B" license. Essentially they advise the Committee, at the time of hearing, if they wish to have a "hold" put on the license prior to the Clerk issuing it. The practical effect of the Commissioner of Neighborhood Services or the

Commissioner of Health requesting such a "hold" is to not hold up the "grant" of the license by the Common Council, but merely hold the issuance of the license by the Clerk.

In short, the "objections" of the Commissioner of Neighborhood Services and the Commissioner of Health do not go to the "grant" of the license rather to its issuance. Therefore the practice of the Department of Neighborhood Services and Health Department do not really comport to the ordinances.

We would suggest that the Code of Ordinances be amended to specify that a written report received from the Chief of Police, the Commissioner of Neighborhood Services or the Commissioner of Health shall be treated as an "objection." The license renewal applicant will be notified of the "objection," and provided a copy of the objection.

Where the City Clerk has reason to believe that neighbors also have an "objection" to the renewal of the license, the City Clerk should provide notice of those objections and where possible (if they have been submitted in writing), copies of the documentation underlying the "objection" for renewal. The 30-day time limit for the reasons set forth above should be eliminated. No such time limit currently exists, and no significant operational problems have occurred. Imposition of such a thirty-time limit will actually work to the benefit of a license renewal applicant who anticipates objections to renewal.

We are aware of the fact that a problem occasionally occurs in that an objecting neighbor may file with the City Clerk and objection to the renewal of an alcohol beverage license at a point in time where it will be impossible to send notice to the license applicant of the objection and still have the matter considered and heard by the Utilities and Licenses Committee and the Common Council prior to the expiration of the license. In order to address that problem, we suggest that Chapter 90 of the Code of Ordinances be amended to specifically state that if an objecting neighbor files an objection so late that it cannot be noticed and heard by the Utilities and Licenses Committee and Common Council prior to the expiration of the license, that such an objection will be calendared for the next license year.

RENEWAL OF CLASS "B" MANAGERS LICENSES AND CLASS "D" OPERATORS (BARTENDERS) LICENSES

This proposal also amends Section 90-11-5 of the Code of Ordinances attempts to short-circuit the system of having Class "B" Managers and Class "D" Operators (bartenders) all appear at the Utilities and Licenses Committee if in fact the Chief of Police, the Commissioner of Neighborhood Services and the Commissioner of Health have indicated that the applicant still meets the licensing qualifications. This provision also has the requirement that such written objections shall have been filed 30 days prior to the date that the license was to expire and that

the objection may be made by any interested person. The same problems pointed out earlier, redound in this case.

First, an interested person, in the case of a Class "B" Manager, could be an adjoining neighbor who has never been given any kind of notice that the license will expire. We agree that Class "D" Operator (bartenders), are not premises-specific, but as we have pointed out earlier in this opinion, Class "B" Managers are. More fundamentally, the Ordinances keep using the term "objection" when the statutes use "report." Further, we note that the term "objection" is nowhere defined in Section 90-1. We suggest that it be. Finally, the 30-day time limit will aid those license applicants who are anticipating an adverse report that can form the basis of non-renewal or suspension. Since no significant operational problems have occurred with no such time limit, and significant ones will occur with it, we recommend eliminating it from the proposal. Where an objection is filed so late it cannot be timely considered before expiration of the license, the ordinances should specify that it will be heard in the next license year.

Very truly yours,

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