

**CHAIR**

- Licenses Committee
- City Information Management Committee

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- Public Works Committee
- Milwaukee Public Library Board
- Employee's Retirement System Annuity & Pension Board



**NIK KOVAC**

ALDERMAN, 3RD DISTRICT

November 16, 2018

To the Honorable, the Common Council

Honorable Members:

Common Council File Number 180896 contains the following recommendations:

Renewal, with a fifteen (15) day suspension, based upon neighborhood testimony of the Class B Tavern, Public Entertainment Premises, Food Dealer, and Sidewalk Dining licenses for Joseph Mclean for the premises located at 725-729 N Milwaukee St ("The Garden/Lucid") in the 4th aldermanic district.

Nonrenewal, based upon the second nonappearance, of the Class D Operator's license of Brandon Hamilton-Smith.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nik Kovac', written over a light blue background.

Nik Kovac, Chair  
Licenses Committee

cc: All Council Members  
File 180896

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**NIK KOVAC**

ALDERMAN, 3RD DISTRICT

Date: November 16, 2018

To: All Members of the Milwaukee Common Council

From: Licenses Committee

Re: Report of the Renewal Application of the Class "B" Tavern, Food Dealer, Public Entertainment Premises (PEP), and Sidewalk Dining Licenses of Joseph Mclean, for the premises located at 725-729 North Milwaukee Street in the City and County of Milwaukee, Wisconsin ("The Garden/Lucid").

**FINDINGS OF FACT**

1. Joseph Mclean (hereinafter "the Licensee") is the holder of Class "B" Tavern, Food Dealer, PEP and Sidewalk Dining Licenses for the premises located at 725-729 North Milwaukee Street in the City and County of Milwaukee, Wisconsin ("The Garden/Lucid"). Said licenses expire at midnight on December 28, 2018.
2. An application to renew said licenses was filed with the Office of the City Clerk on October 22, 2018.
3. Pursuant to Chapters 68, 85, and 90 of the Milwaukee Code of Ordinances and Chapter 125 of the Wisconsin Statutes, the matter was referred to the Milwaukee Police Department for investigation. On October 25, 2018, the Milwaukee Police Department responded with a report that could form the basis for nonrenewal of said licenses.
4. On November 1, 2018, the City Clerk's Office provided timely notice to the Licensee pursuant to Chapters 68, 85, and 90 of the Milwaukee Code of Ordinances and Chapter 125 of the Wisconsin Statutes of the neighborhood objections. The matter was scheduled for a hearing on the objections on November 14, 2018, commencing at approximately 10:30 a.m. in Room 301-B of the third floor of City Hall. At said date, time and place, the Licensee appeared at the hearing, with counsel, Attorney Sean Finnegan, and admitted receipt of the notice of hearing.



5. Based upon the sworn testimony heard and the evidence received at the hearing, the Committee finds the following:

A. On March 17, 2018, the Licensee was cited in the City of Milwaukee at 218 North Water Street for:

Charge: Excessive Noise Prohibited  
Finding: Guilty  
Sentence: Fined \$240.00  
Date: 5/4/2018  
Case: 18037241

B. The Licensee stated they put in noise proofing with insulation. He stated the door men help clean up the trash and there are closing procedures in place. He stated they have moved the speakers around to help with the noise. He stated they had a sound technician come in and turn the music down as much as possible.

C. Atty. Sean Finnegan stated people use The Garden from time to time for overflow purposes. He stated that because a wall is shared that can contribute to the noise. He stated the complainants can call the manager regarding noise complaints. He stated they have been working with sound technicians to try and mitigate the volume. He stated that additional steps can be taken for sound engineering and they can meet with the neighbors regarding the noise. He stated they can meet with an architect regarding the historical nature of the building and volume. He stated he has heard from some neighbors that older windows can be an issue, and that he expected a neighbor testifying in support of the business to explain further. He stated one of the complainants did not contact the premises, so they cannot address issues they are unaware of. He stated they can look in to sound engineering and want to make sure people on Milwaukee St are happy. He stated they can work with the homeowners next door and does not think a suspension is appropriate.

Individual present in opposition:

D. Jameson Snider, 715 N Milwaukee Street, Unit 215, testified that he moved in in April and the bass is loud and he can feel his walls vibrating from 10:00 p.m. - 2:00 a.m. every day that the premises is open. Mr. Snider stated there was no resolution after three months and communicating with the employees every other week. He stated he has called the police numerous times regarding noise issues in October and

November. He stated the police showed up and he requested a citation be issued. There was no record of the citation in the police report beyond the citation listed above, Mr. Snider further explained that his unit is three store fronts away and more than 50 ft, but the police never entered his home to hear the music or feel the bass. He stated that he was told by the premises that sound proofing is expensive and he has trouble sleeping.

- E. Mr. Snider further testified that he believes there are Americans With Disabilities Act concerns because there was a canopy obstructing the entire sidewalk with only two feet to walk and sometimes there are theater ropes up. He stated the canopy has come down and it can be difficult walking around after midnight with people thinking others are cutting the line. He added there is trash and vomit after Friday and Saturday nights.
- F. Erin Donnegan, 715 North Milwaukee Street, Unit 304, stated the club noise has gotten worse over the past year and her quality of life has decreased drastically. She stated the noise through the wall is so loud and clear she can hear the words to songs and what the DJ is saying. She added that the bass vibrates her walls. She stated she is unable to get enough sleep because of the noise, and earplugs or headphones do not work. She stated she can feel the bass in her bed at night. She stated when she moved in The Garden was only used for special events, but now it is open every night for overflow. She stated she has called the police and they responded. She stated the noise is every Thursday through Saturday.

Individuals present in support:

- G. Jacqueline Bornek, 715 North Milwaukee Street, Unit 305, stated she had her windows replaced in September and she does not have any shared walls with the premises. She stated there was a lot of noise before her windows was replaced. She stated she can hear mild bass, but it has not affected her. She stated she has had issues with people parking in the alley, but the manager is responsive and offer her their parking space. She stated she does not want any more vacant storefronts on Milwaukee Street. She stated her bedroom is adjacent to the premises and she could hear bass and people yelling in the alley before she replaced her windows.
- H. Reynaldo Franklin, 826 N Cass Street stated he is the head security guard outside and his employees clean up prior to leaving on Thursday, Friday, and Saturday. He stated the canopy is for weather purposes only and leaves five feet of space to walk and wheelchairs can get through. He



stated the canopy and ropes are not up all night. He stated complainants should contact the manager. He stated the premises are a safe and fun environment for everyone.

- I. Alderman Bauman stated there was testimony from two very credible witnesses about the noise who have no economic interest in the premises, who just want to live next door, live their lives, and sleep a normal amount of sleep. He stated there is nothing they can do to quietly enjoy their homes. He stated it is totally unacceptable that the noise is affecting their quality of life. He stated the sound proofing of the premises needs to be completely reengineered. He recommends a 30 day suspension.
- J. Alderwoman Coggs stated she hopes that the owner is responsive to resident complaints and is not blocking the sidewalk or impeding the ability for people to walk down the sidewalk. She asked if anyone has been brought in to address noise mitigation.
- K. Alderman Witkowski stated there have been two written warnings for the premises previously.
- L. Alderman Witkowski moved approval with a 15 day suspension based on neighborhood testimony. (Prevailed 3-1-1)

### **CONCLUSIONS OF LAW**

- 1. The Committee has jurisdiction to hold hearings and provided Findings of Fact and Conclusions of Law and a Recommendation to the full Common Council pursuant to Chapters 68, 82 and 85 of the Milwaukee Code of Ordinances.
- 2. Based upon the above facts found, the Committee concludes that the Licensee, Joseph Mclean who holds Class B Tavern, Food Dealer, Public Entertainment Premise (PEP) and Sidewalk Dining licenses for the premise located at 725-729 North Milwaukee Street in the City and County of Milwaukee, Wisconsin ("The Garden/Lucid") has not met the criteria of Chapters 68, 82 and 85, of the Milwaukee Code of Ordinances to not renew the Class B Tavern, Food Dealer, Public Entertainment Premises and Sidewalk Dining licenses without undergoing a fifteen (15) day suspension. The Committee finds the police report and aldermanic objections as stated above to be true. The Committee based its recommendation on the neighborhood testimony.
- 3. In order to protect the health, safety and welfare of the citizens of the City of Milwaukee, it is the recommendation of the Licenses Committee that the full

Common Council of the City of Milwaukee should exercise its judgment to not renew the Class B Tavern, Food Dealer, Public Entertainment Premise (PEP) and Sidewalk Dining licenses without undergoing a fifteen (15) day suspension for the premises located at 725-729 North Milwaukee Street in the City and County of Milwaukee, Wisconsin ("The Garden/Lucid"). The Committee based its recommendation on neighborhood testimony.

### RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated above, the Committee, by a vote of **three (3) ayes, one (1) noes, and one (1) abstention**, recommends that the Class "B" Tavern, Food Dealer, PEP and Sidewalk Dining Licenses of Joseph Mclean for the premises located at 725-729 North Milwaukee Street ("The Garden/Lucid") in the City and County of Milwaukee, Wisconsin not be renewed without undergoing a fifteen (15) day suspension based upon neighborhood testimony.

The suspension is in effect between 12:01 a.m. on December 29, 2018 until 11:59 p.m. on January 12, 2019.

Dated and signed at Milwaukee, Wisconsin this 16<sup>th</sup> day of November, 2018.



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NIC KOVAC  
Chairman, Licenses Committee

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**NIK KOVAC**

ALDERMAN, 3RD DISTRICT

Date: November 16, 2018

To: All Members of the Milwaukee Common Council

From: Licenses Committee

Re: Report on the Renewal Application of the Class "D" Operator's License of Brandon J. Hamilton-Smith

**FINDINGS OF FACT**

1. Brandon J. Hamilton-Smith (hereinafter the "Licensee") is the holder of a Class "D" Operator's License in the City and County of Milwaukee, Wisconsin. Said license expired on December 31, 2017.
2. An application to renew said license was thereafter filed with the Office of the City Clerk.
3. Pursuant to Chapter 90 of the Milwaukee Code of Ordinances and Chapter 125 of the Wisconsin Statutes, the matter was referred to the Milwaukee Police Department for investigation. The Milwaukee Police Department responded with a police report that could form a basis for nonrenewal or suspension of said license.
4. On October 31, 2018 the City Clerk's Office provided timely notice to the Licensee pursuant to Chapter 90 of the Milwaukee Code of Ordinances and Chapter 125 of the Wisconsin Statutes of the report of the Milwaukee Police Department and included therewith a copy of the Milwaukee Police Department report. The matter was scheduled for a hearing on the police department report on November 14, 2018 at 1:00 p.m. in Room 301B of City Hall. At said date, time and place, the Licensee did not appear.
5. Based upon the sworn testimony heard and the evidence received at the hearing, the Committee finds the following:
  - A. A notice of the hearing as well as a copy of the police report was sent to Brandon J. Hamilton-Smith, 3338 South 97th Street, #3, Milwaukee, WI 53227 on September 19, 2018 by U.S. prepaid first-class mail in an envelope bearing the return address of the License Division. The address of 3338 South 97<sup>th</sup> street, Milwaukee, WI 53227 is the address given by the Licensee on his application. The envelope was not returned to the License Division by the United States Postal



Service. The Licensee failed to appear at the hearing on November 14, 2018 at 1:00 p.m.

- B. On June 28, 2017, the Licensee was charged with Possess Marijuana on State Land in Walworth County:

Charge: Possess Marijuana on State Land  
Finding: Guilty  
Sentence: Fine  
Case: 2017FO000326  
Date: 08/02/17

- C. The Licensee has 2 warrants with the New Berlin Police Department for Operating While Suspended and Possession of Paraphernalia.

AE4361556	01/24/18	\$124.00
B481BGSFCP	02/21/18	\$502.00

- D. The Licensee has a warrant with Greenfield Police Department for Operating While Suspended

173945	02/06/18	\$124.00
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- E. The Licensee has a warrant with Muskego Municipal Court for Operating After Suspension.

18000022	02/20/18	\$313.00
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- F. The License owes the following outstanding balance to Milwaukee Municipal Court:

18046601	Oper w/o insurance	8/06/18	\$124.00
18046601	Oper w/o Headlights	8/06/18	\$86.20
18046945	Oper After Suspension	08/06/18	\$124.00
18046946	Disp Unauth Regis Plt	08/06/18	\$161.80

- G. Alderwoman Lewis moved denial based on his second non-appearance.

### CONCLUSIONS OF LAW

1. The Committee has jurisdiction to hold hearings and provide Findings of Fact, Conclusions of Law and a Recommendation to the full Common Council pursuant to Chapter 125 of the Wisconsin Statutes and Chapter 90 of the Milwaukee Code of Ordinances.



2. Based on the above facts found, the Committee concludes that the Licensee, Brandon J. Hamilton-Smith has not met the criteria of Chapter 125 of the Wisconsin Statutes or Chapter 90 of the Milwaukee Code of Ordinances to allow renewal of the Class "D" Operator's license based upon his second nonappearance.
3. In order to protect the health, safety and welfare of the citizens of the City of Milwaukee, it is the recommendation of the Licenses Committee that the full Common Council should exercise its discretion to not renew the Class "D" Operator's license held by Brandon J. Hamilton-Smith based upon his second nonappearance.

### RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated above the Committee recommends by a vote of **five (5) ayes and zero (0) noes** that the Class "D" Operator's License of Brandon J. Hamilton-Smith not be renewed based upon nonappearance.

Dated and signed at Milwaukee, Wisconsin this 16th day of November, 2018.



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NIK KOVAC  
Chairman Licenses Committee

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