

**CHAIR**

- Licenses Committee

**MEMBER**

- Community and Economic Development Committee
- Steering and Rules Committee



**TONY ZIELINSKI**  
ALDERMAN, 14TH DISTRICT

December 9, 2013

To the Honorable, the Common Council

Honorable Members:

Common Council File Number 130710 contains the following recommendation:

Renewal with a thirty (30) day suspension, based on the police report and police and neighborhood testimony, of the Class "B" Tavern and Public Entertainment Premises licenses of Habib Manjee, agent for Lady Bug Club, LLC for the premises located at 622 N. Water Street ("618 Live on Water" in the 4<sup>th</sup> aldermanic district (Committee vote: 4 ayes and one abstain)

This matter has been scheduled for a hearing before the full Common Council at its meeting on **Tuesday, December 17, 2013 at 9:00 A.M.** in the Common Council Chambers.

Respectfully,

A handwritten signature in black ink that reads 'Tony Zielinski'.

Tony Zielinski, Chair  
Licenses Committee

cc: All Council Members  
File 130710

## **Elmer, Linda**

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**From:** Stephens, Adam  
**Sent:** Friday, December 06, 2013 11:16 AM  
**To:** Hines Jr., Willie; Zielinski, Tony; Coggs, Milele; Kovac, Nik; Dudzik, Joseph; Perez, Jose; Bauman, Robert; Owczarski, Jim; Grill, Rebecca; Wessel, Thomas; Elmer, Linda  
**Cc:** Langley, Grant; Moschella, Vincent; Howard, Regina; Raap, Aaron; Basting, Stephen; Raden, Chad  
**Subject:** Lady Bug Club LLC (dba 618 Live) v. COM, Judicial review Case # 2013-CV-10227

Yesterday, Circuit Court Judge Sankovitz reconsidered his previous decision and granted 618 Live's motion for a temporary injunction to permit the club to reopen pending final disposition of this litigation. Therefore, 618 Live will reopen at least for the next two weeks (until the next council meeting of December 17th). I will forward a copy of the court's decision upon receipt.

Judge Sankovitz found that the City violated 618 Live's due process and statutory right to be heard when the City denied counsel's attempt to e-file written objections and argue to the full common council on November 5th. The court found that the City was at fault for not receiving the emailed objections when those objections were unknowingly quarantined by the City's servers the Thursday before council.

The court ordered expedited briefing of the remaining issues in this case to be completed by next week. The court will issue its final decision in this case on Monday, December 16th. The Common Council should have an opportunity to correct any procedural deficiencies at the next council meeting the following day.

In the meantime, based on the court's preliminary order, the City Clerk will schedule the 618 Live Common Council file for oral argument and reconsideration at the next council meeting on December 17th. Copies of the Licenses Committee report and objections from counsel to the revocation complainants and the licensee will be circulated to all council members at the end of next week.

Please feel free to contact me with any questions or concerns.

ADAM B. STEPHENS, ASSISTANT CITY ATTORNEY  
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October 31, 2013

Via Email Only: jowcza@milwaukee.gov  
City Clerk James R. Owczarski  
City Hall  
200 East Wells Street, Room 205  
Milwaukee, WI 53202

Re: Lady Bug Club, LLC d/b/a 618 Live On Water – 622 N. Water Street  
Objections

Dear City Clerk Owczarski,

Our office is Counsel to Lady Bug Club, LLC d/b/a 618 Live on Water ("Lady Bug"). On October 18, 2013, the Licenses Committee ("Committee") voted to suspend Lady Bug's license for 30 days based upon certain items in its police synopsis and the testimony of the Milwaukee Police Department and neighbors. This letter serves as my client's written objection to the "Findings of Fact and Conclusions of Law" and recommendation of the Committee. The specific objections are as follows:

1. The committee improperly considered the sworn written charges of Lisa Farrell, in violation of § 90-12-2-4, Milwaukee Code of Ordinances, which states that suspension or revocation proceedings may be instituted upon a sworn written complaint filed with the city clerk by any city resident. Lisa Farrell, who resides in New Berlin, does not meet the definition of a City of Milwaukee resident pursuant to § 90-12-2-4, which states that a residence shall mean a place where one actually lives or has his home. Moreover, the committee cannot rely upon a sworn complaint submitted by Lisa Farrell on behalf of a business, First Hospitality Group, Inc, with its corporate headquarters located in Rosemont, Illinois. Therefore, any evidence related to any sworn complaint filed by Lisa Farrell cannot properly be considered by the committee or common council and must be stricken.
2. Pursuant to § 90-12-5(a)(3), Milwaukee Code of Ordinances, the chief of police must prepare a report with information relating to the allegations contained in the written charges or complaint. The report shall first state whether the chief of police has information relating to the allegations contained in the written charges or complaint. Although the chief of police did submit a report, it contained boilerplate language that did not relate to incidents in the complaint and it did not include a statement whether the chief of police had additional information relating to the allegations contained in the complaint. The City Attorney refused to

- recognize the validity of counsel's objection at the hearing. In order for all parties to rely on the validity of the revocation complaint, the chief is required to investigate the complaint and make the aforementioned statement. There is no evidence that the chief of police investigated the validity of any police report associated with the complaint, and therefore the committee should not have relied upon any of the police reports in making its decision.
3. Chairman Zielinski voided a subpoena properly served upon the chief of police without notice to Lady Bug. This action resulted in prejudice to Lady Bug, which was left with no means to challenge the chief of police's failure to provide a proper statement as required under § 90-12-5(a)(3). Had Chairman Zielinski provided notice that he would take such action, Lady Bug would have made alternate arrangements. Without this notice, the committee failed to provide Lady Bug with a fair hearing.
  4. On October 18, 2013, Lady Bug filed a motion to disqualify Alderman Bauman from participating in any vote of the Common Council in the above matter, relative to any decision whether to revoke the Lady Bug's license. That motion is attached and incorporated as part of Lady Bug's objections. In addition to the arguments presented in the motion, Lady Bug asserts that they were prejudiced by Alderman Bauman's failure to provide requested public records either prior to or at the licensing hearing. The City Attorney objected to this public records request only after the licensing hearing.
  5. On October 18, 2013, Lady Bug filed a motion requesting that Aldermen Dudzik 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's license to the Common Council and as Common Council members voting on the final determination. That motion is attached and incorporated as part of Lady Bug's objections. In addition to the arguments presented in the motion, Lady Bug asserts that Alderman Dudzik displayed clear prejudice at the neighborhood meeting by making false and derogatory comments pertaining to Lady Bug and its counsel. His comments alone disqualify him from voting.
  6. Lady Bug requests that Alderman Donovan recuse himself from voting for soliciting campaign funds from Lady Bug and its counsel in between votes at the committee and Common Council meeting.
  7. Lady Bug objects to the testimony of Captain Stephen Basting as his statements were not made on behalf of the chief of police. Moreover, Captain Basting had no actual facts to provide during the hearing. Lady Bug requests that this testimony be stricken.
  8. Paragraph B of the Findings of Fact is a synopsis of a meeting that took place between Captain Basting and Lady Bug, among others. Lady Bug objects to this paragraph because it leaves out positive comments written in Captain Basting's

report.

9. Lady Bug objects to paragraph C because the synopsis of the incident on June 2, 2013 does not mention that CPS previously agreed to maintain a security guard presence at the parking lot during the time this incident occurred. Had CPS followed through on its end, this incident may have been prevented.
10. Lady Bug objects to paragraph D on hearsay grounds, as there was no testimony based on firsthand knowledge that these individuals were actually headed to Lady Bug.
11. Lady Bug objects to paragraph E because the police were on scene on a prearranged mission and inexplicably released an intoxicated individual who proceeded to not only operate his motor vehicle but also fire his weapon. This incident should not be attributed to Lady Bug, as it not only occurred outside of the club but should not have occurred in the first place had the police not allowed this clearly intoxicated individual to freely operate his motor vehicle.
12. Lady Bug objects to paragraph G as Captain Basting's testimony was not supported by the authority of the chief of police.
13. Lady Bug objects to paragraph H because Officer Bjorkquist did not testify based on any firsthand knowledge, but rather narrated over a video, which coincidentally was obtained only through the cooperation of Lady Bug Club. Only through Lady Bug's cooperation were the police able to identify the suspect's identity.
14. Lady Bug objects to paragraphs I and J as they are both embarrassingly sanitized versions of the incident described in paragraph E, which shows that officers were at fault for releasing an intoxicated individual who subsequently operated his vehicle and fired his weapon.
15. Lady Bug objects to paragraph K and L on hearsay grounds, as there was no testimony based on firsthand knowledge that either the victim or suspect had been at Lady Bug that night.
16. Lady Bug objects to the inclusion of Lisa Farrell's testimony in paragraph M because of the objections listed in paragraph I regarding her failure to meet residency requirements. Additionally, Lady Bug asserts that they received no noise complaints since the January 30, 2013 meeting. All other testimony provided by Lisa Farrell is based on hearsay testimony and should not be considered. Moreover, while under oath, Lisa Farrell falsely indicated that social media was portraying the hotel in a negative light, a fact which was disproven by Alderwoman Coggs.
17. Lady Bug objects to paragraph N because Kanitra Murphy could not provide

specific dates or times of the noise complaints after the noise abatement took place at Lady Bug.

18. Lady Bug objects to paragraphs O and P, as neither witness was able to testify to whether these individuals were customers of Lady Bug.
19. Lady Bug objects to paragraph R, as John Halverson's complaints do not seem to be directed at Lady Bug, but rather towards a particular demographic.
20. Lady Bug objects to paragraph S because it is a sanitized version of the incident described in paragraph E.
21. Lady Bug objects to paragraph U because this paragraph fails to recount that the director failed to invite Lady Bug, a member of the BID, to the BID meeting at which its license was discussed.
22. Lady Bug objects to the paragraph II insofar as it suggests Lady Bug Counsel was soliciting witnesses that were not previously disclosed on a witness list. The witness referenced by Alderman Dudzik was included on this prearranged list.
23. Regarding paragraph MM, the name of the witness is Monique Taylor, not "Bonnie Taylor." Ironically, this misidentified witness is that same witness that Alderman Dudzik believed to be pulled from the audience by Attorney Halbrooks.

In summary, Lady Bug objects to the Findings of Fact and Conclusions of Law. The reasons relied upon for the 30-day suspension are unjust and not substantiated by any reliable evidence. The Findings of Fact and Conclusions of Law drafted by the City Attorney's office contain numerous inaccuracies and heavily rely upon hearsay.

Finally, Lady Bug's rights to Due Process have been violated by the actions of the Licenses Committee.

Thank you for your attention to this matter.

Sincerely,



Michael Rud  
Attorney at Law

Enc.

Cc: Lady Bug Club, LLC d/b/a 618 Live on Water (w/ enc.)  
Members of the City of Milwaukee Common Council (via email w/enclosures)

City of Milwaukee Licenses Committee

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Hilton Garden Inn and Suites

Petitioner,

v.

Ladybug Club,

Respondent.

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**MOTION FOR THE DISQUALIFICATION OF ALDERMEN ROBERT  
BAUMAN PARTICIPATING AS A DECISION MAKER ON 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 Licenses Committee on October 18, 2013, relative to a Complaint filed by the Hilton Garden for revocation of the Ladybug Club's license, pursuant to Wis. Stat. §125.12. Subsequent thereto, the matter will come before the Common Council for a final decision as to whether or not to grant the Hilton Garden's request to revoke the license of the Ladybug Club. Based upon considerations of due process, the Ladybug Club requests that Alderman Bauman be disqualified from participating in any vote of the Common Council concerning whether or not to revoke the license of the Ladybug Club based upon the Hilton Garden's Complaint.

**II. THE LADYBUG CLUB HAS A SUBSTANTIAL PROPERTY  
INTEREST IN ITS LICENSE AND THUS IS ENTITLED TO DUE PROCESS IN  
ANY ATTEMPT TO REVOKE THAT PROPERTY INTEREST.**

The Hilton Garden attempts to have the Ladybug Club's liquor license revoked pursuant to Wis. Stat. §125.12. Review of any decision by the Common Council is

through certiorari to the Circuit Court. Wis. Stat. §125.12(2)(d); *Nowell v. City of Wausau*, 2012 WI App 100, ¶ 7, 344 Wis. 2d 269, 273, 823 N.W.2d 373, 375 review granted, 2013 WI 40, 347 Wis. 2d 111, 829 N.W.2d 750. "Certiorari is an extraordinary remedy that tests the validity of a judicial or quasi-judicial decision." *Id.* Thus, by statute, the act of the Common Council to revoke such a license is a judicial or quasi-judicial act.

Moreover, "an owner has a 'substantial property interest in retention of his liquor license,' since revocation can cause the loss of both income and investments in the physical property." *Id.*, at ¶ 12.

Yet tavern owners have the most to lose; "[t]he [owners'] stake ... is both their occupations and their investments[,] for denial of the renewal of a liquor license bars them not only from selling liquor but substantially impairs the value of their taverns." *Misurelli v. City of Racine*, 346 F.Supp. 43, 48 (E.D.Wis.1972), vacated, *City of Kenosha v. Bruno*, 412 U.S. 507, 93 S.Ct. 2222, 37 L.Ed.2d 109 (1973).

*Id.*

With so much at stake for the tavern owner, due process in the determination of whether or not to strip a tavern owner of this property interest is clearly crucial. For this reason, the indications that Alderman Bauman has prejudged this matter, before any evidence has been heard, must be taken seriously; and Alderman Bauman should be disqualified from participating in any vote relative to the licensing of the Ladybug Club, in order to protect the Ladybug Club's due process rights over its property interest.



### III. REQUEST FOR RECUSAL ON DUE PROCESS CONSIDERATIONS

"It is, of course, undisputable that a minimal radiment of due process is a fair and impartial decisionmaker." *Giulhrle 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.

"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. *Id.* at 454. Thus, there need not be bias in fact but only "a situation in which the risk of bias or partiality on the part of the decisionmaker is too high to be constitutionally tolerable." *Id.* at 458.

The facts in this case demonstrate not only that the risk of bias is too high to be constitutionally tolerable, but they go even further to reveal actual bias on the part of Alderman Bauman. As a result, the Ladybug Club is respectfully requesting that Alderman Bauman be disqualified from participating in any vote of the Common Council in the above matter, relative to any decision whether to revoke the Labdybug Club's license.

On Monday, October 7, 2013, Alderman Bauman hosted a neighborhood meeting held by the Downtown Neighborhood Association (hereinafter "DNA") at the Marriot Hotel. Counsel for the Garden Hotel and a representative of the Garden Hotel, were invited not only to attend the meeting, but to give a presentation at the meeting about why

they were seeking revocation of the Ladybug Club's license. Neither counsel for the Ladybug Club nor the owner of the Ladybug Club were invited to attend the neighborhood association meeting.

Alderman Bauman has previously demonstrated his personal desire to have the Ladybug Club's license revoked, at the renewal hearing approximately one year ago. During that hearing, Alderman Bauman advocated for the non-renewal of the Ladybug Club's license, despite there being no complaint by the Milwaukee Police Department relative to any criminal or nuisance activity occurring at the Club, and no other evidence of any criminal or nuisance behavior at the establishment. Specifically, when the Licenses Committee voted to renew the Club's license, Alderman Bauman stated that it was not a problem, that the Hilton Garden would get the Club's license revoked the following year. (See recording of Licenses Committee meeting notes dated 11/12/2012). There is no doubt, based upon this statement, that Alderman Bauman has already made up his mind whether the Ladybug Club should have its license revoked.

Alderman Bauman's participation in the neighborhood association meeting, his failure to invite the Ladybug Club to attend this meeting, and his statements at the previous hearing on this issue, all demonstrate that Alderman Bauman has prejudged this matter and determined, without any consideration to the evidence presented at a hearing, that the Ladybug Club's license should be revoked. This predetermination of the matter will violate the Ladybug Club's due process rights relative to preserving its property interest in its license to operate its business. As a result, Alderman Bauman should be disqualified from participating as a decision maker in the vote of the Common Council as to whether or not to revoke the Ladybug Club's license. Case law is clear, where there is

a high chance of impermissible bias, the decision maker must be removed in order to preserve the due process afforded the property owner. *Guthrie* at 454. Failure to disqualify Alderman Bauman from this decision will result in the denial of the due process right to the Ladybug Club and render any decision of the Common Council void.

This circumstances in this matter are similar to that in the case of *Marris v. City of Cedarburg*, 176 Wis.2d 14, 498 N.W.2d 842 (1993). In the *Marris* case, the Wisconsin Supreme Court held that the prior involvement of a zoning board member rendered him "impermissibly bias" and he should have been disqualified from participating in the decision of the zoning board on that matter. The *Marris* Court determined that because the board member had prejudged the matter, thus creating an impermissibly high risk of bias, his refusal to recuse himself deprived the property owner of a fair hearing, and thus due process. *Marris*, 176 Wis.2d at 19.

The consideration of a zoning board relative to land use is similar to that of the Common Council on licensing matters. Both directly affect the owner's ability to use the property in the manner in which the owner intended. Recognizing that the decision regarding zoning matters were ones of local concern and particularly subject to biases, the Supreme Court noted that it was important to ensure that due process was afforded to the property owner.

In determining whether *Marris* was afforded due process and fair play, we recognize that zoning decisions implicate important private and public interests; they significantly affect individual property ownership rights as well as community interests in the use and enjoyment of land. Furthermore, zoning decisions are especially vulnerable to problems of bias and conflicts of interest because of the localized nature of the decisions, the fact that members of zoning boards are drawn from the immediate geographical area, and the adjudicative, legislative and

political nature of the zoning process. Since biases may distort judgment, impartial decision-makers are needed to ensure both sound fact-finding and rational decision-making as well as to ensure public confidence in the decision-making process.

*Id.*, at 25-26. (emphasis added)

The *Marris* Court further emphasized that a Board making a determination relative to a specific piece of property that affects the activities of that property owner, must first engage in fact-finding before rendering any judgment or decision based upon those facts. Where a Board member prejudges the facts, then the property owner's rights to due process is violated. *Id.*, at 26.

The zoning decision in this case requires that the Board examine a specific piece of land and the activities of a particular property owner. It must engage in fact-finding and then make a decision based on the application of those facts to the ordinance. In this case, where established criteria direct the Board's fact-finding and decision-making, *Marris* should expect that a decision will be made on the basis of the facts and the law. If a Board member prejudges the facts or the application of the law, then *Marris's* right to an impartial decision-maker is violated.

*Id.*, at 26. (emphasis added)

"Determining whether a board member has prejudged a matter requires an examination of the facts of the individual case." *Id.*, at 26. "A clear statement suggesting that a decision has already been reached, or prejudged, should suffice to invalidate a decision." *Id.*, at 26. In the *Marris* case, the Board member at issue had previously referred to the property owner's position as "a 'loopole' in need of 'closing.'" *Id.*, at 27. The Board member had further stated to other Board members and the

assistant city attorney that they "should try to 'get her [Marris] on the Leona Helmsley rule.'" *Id.*, at 27. The property owner contended that these statements, among others, demonstrated that the Board member had prejudged her credibility. The Court held that the Board member's refusal to recuse himself denied the property owner the right to a fair hearing, and thus due process. *Id.*, at 28. The Supreme Court held that the Board member's comments about the property owner "created a situation in which the risk of bias was impermissibly high." *Id.*, at 29. The Supreme Court reasoned that "these statements overcome the presumption of honesty and integrity that would ordinarily be applied to this case." *Id.*, at 29-30, citing *Guthrie v. WERC*, 111 Wis.2d at 455, *State ex. rel. Northwestern Dev. Corp. v. Gehrz*, 230 Wis. 412, 421-422, 283 N.W. 827 (1939).

The statements made by Alderman Bauman at the 2012 hearing that the Hilton Garden would get the Ladybug Club shut down the next year, are similar to the statements made by the Board member in the *Marris* case. The statement demonstrates the Alderman's frame of mind in that he believes the Ladybug Club should be shut down. Thus he has prejudged the situation before a hearing on the full and true fact has ever been held. The fact that the Alderman has already made his decision in this matter is further demonstrated by the fact that he invited the Hilton Garden to speak at the neighborhood meeting, but failed to invite the owner or counsel of the Ladybug Club to attend, not to mention to speak or have its side of the story heard.

The comparison to the *Marris* case demonstrates the actual bias in fact which is clearly present in this case by Alderman Bauman. This standard however, is more than the Ladybug Club needs to demonstrate. As stated in *Guthrie*, only a risk of bias too high to be constitutionally permitted, needs to be demonstrated in order for due process

rights of the Ladybug Club to be violated. There simply is no doubt that an impermissibly high risk of bias has been demonstrated by Alderman Bauman this matter. Therefore, he should be disqualified from participating in any vote on this issue.

The law is clear. Because Alderman Bauman has prejudged this case, he must be disqualified from participating as a decision maker on any vote relative to whether the license of the Ladybug Club should be revoked. Failure to disqualify Alderman Bauman in this case will deprive the Ladybug Club it due process rights.

### III. CONCLUSION

In light of the clear and apparent facts that Alderman Bauman has prejudged the facts of this case, the law requires that he be disqualified from participating as a decision maker in this case. Failure to disqualify Alderman Bauman, given his clear bias would violate the Ladybug Club's due process rights. Moreover, while there is bias in fact present in this situation, the standard is not even this strict. The bias only need be a risk of bias too high to be constitutionally permissible.

Therefore, the Ladybug Club respectfully requests that Alderman Bauman be disqualified from participating in any vote relative to the licensing or revocation of any such license of the Ladybug Club.

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

MAISTELMAN & ASSOCIATES, LLC



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Michael Rud  
State Bar No. 1083073  
Michael S. Maistelman  
State Bar No. 1024681  
David R. Halbrooks  
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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



Michael Rud  
State Bar No. 1083073  
Michael S. Maistelman  
State Bar No. 1024681  
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*Christopher Law Office LLC*

October 30, 2013

The Honorable Members of the Milwaukee City Common Council  
Milwaukee City Hall  
200 E Wells Street  
Milwaukee, WI 53202

Re: *Written Objections Regarding 30-Day Suspension of Lady Bug Club, LLC.*

Dear Honorable Council Members:

On September 11, 2013, two citizens put their reputations on the line for the benefit of their community. They undertook the unprecedented action of filing written complaints requesting this council to revoke the license of Ladybug Club—a club where violent crime, along with other nuisance activities, have been directly related to that club's operations.

The activities surrounding the club has a substantial adverse impact on the community. The Club creates a constant threat to safety for residents and visitors in the area. Recently, and within a period of 5 weeks during the summer, three separate incidents of shootings took place in the vicinity of where the complainants and others live and work. Two of the shootings were confirmed by police as being directly related to the club as its patrons were involved in the shooting as they left the club (June 2, 2013) or resulting from a fight that occurred within the club (July 13, 2013).

Sadly, three people were shot in the gunfire. The suspects in the June 2<sup>nd</sup> and July 13<sup>th</sup> shootings were patrons of the club. In one of the shootings, a bullet went through the window of a local business and legally parked cars were riddled with gunfire. *The activities at the club have only escalated and have become more violent since the last warning letter issued by the Common Council to the club in November 2012.*

Problems with this establishment affecting the safety, enjoyment and prosperity of the neighborhood are not limited to these incidents. Testimony regarding constant need for police presence during operations, ongoing fights for which police are unable to control, loud noise, cruising, and escalated violent crime have created an economic dead-zone in the heart of Milwaukee. Not to mention a safety concern for residents and businesses in the immediate neighborhood.

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CITY OF MILWAUKEE

Adding to concerns is the devastating impact the Clubs activities have had on the economic well-being of the neighborhood, especially at a time when Milwaukee is developing a stronger reputation as a desirable city to invest and conduct business. Two of the shootings took place immediately in front of the Hilton Garden Inn located on 611 N. Broadway Streets. It was the hotels guests, from outside Wisconsin and even the United States, who served as witnesses for the police. The hotel has invested \$19 million to renovate a gem of building in order to attract vibrancy to Milwaukee's downtown neighborhood. Bringing with it 80 mostly full-time jobs and countless number of accompanying service jobs. News reports of the shootings, with the new hotel in the background, ran on Channel 12. Complaints of constant noise, gunfire, fights and cruising flooded the complaints of the hotel costing them thousands of dollars in compensation and untold amounts in lost business. The result of the clubs activities have resulted in the investment group delaying in renovating the Mackey Building, located across the street.

Telling is the committee's report and the number of businesses, individuals, community organizations and community leaders that have testified that not only is the operation of the 618 Club resulting in a safety and nuisance threat, but that the operation is creating an economic dead-zone in the heart of our city. Representatives from the Downtown Neighbors Association testified for revocation, a Representative from the Business Improvement District testified that the continued operation of the club is a severe and ongoing threat –citing as an example of having to lend their street sweeper to a local business to clean up blood from a recent shooting associated with the club. Despite the Club bringing in people to testify, no business nor resident within the immediate neighborhood testified in support of the clubs on-going operation.

Also telling was the testimony of business owners and community advocates. Rachel Foreman, Executive Director of the Grand Avenue Club, an organization which provides work and projects for those with mental illness and striving to get back into society, stated that they cannot expand their programs because of the nuisance activities on the streets emanating from the club. John Halverson from the Grain Exchange, a Bartolatta Restaurant, indicated that they have lost business and frequently receive calls about safety regarding incidents of violence originating from the club.

Finally, is the lack of concern for the community exhibited by the Club. While they have complied with the police in investigations and alert the police to when there will be "rough crowds," the gestures seem geared toward self-preservation. No efforts have been made by the ownership of the club to address the concerns of the community—the obvious reason is that club ownership does not believe they are responsible for the problems stemming from the operation of their club. Windows have been broken of nearby businesses but the Club, yet despite promises, failed to compensate them. When one community leader

testified as to the impact of the operation of the club on businesses, she was attacked as not-credible because she did not have a “college degree.”

As the finding of facts point out, the Licensee has stated to officers that he was going to “pay bums to sit in front of the hotel and go inside” in attempts to hurt the hotel. When complaints or concerns were made to the licensee, he has threatened people to picket and protest in front of their business and home. The Licensee at the committee, in a moment ranging on the bizarre, had one of the complainants followed by a private investigator, and had her car tires marked when she spent the night with her husband.

An examination of the prior history indicates we are delaying the inevitable, meanwhile putting the safety and economic prosperity of our city at risk. In the approximate 8 years since the Club has been in operation they have received suspension of 20 days, 45 days, and 60 days, along with warning letters for every renewal not given with a suspension.

Following please find additional testimony not reflected in the committee report:

1. Testimony and affidavits from City Residents and businesses who live in the immediate neighborhood such as:
  - a. Thomas Wilson III (Complainant) who testified he has been approached and harassed by patrons of the club standing in line to enter the club and whose concerns have only increased due to the escalated violent crime as a result of the operations of the club.
  - b. Lisa Farrell, General Manager of the Hilton Garden Inn, who stated her concerns of safety for her guests and employees of the hotel. Lisa testified as to the police tape surrounding the hotel during one of the shootings and blood on the sidewalk in front of hotel. Such photos were broadcast in the media, creating a negative blight on the hotel and in downtown Milwaukee. She testified as to the many complaints she has received as general manager from her guests and staff for loud noise, lewd acts and disorderly and indecent behavior by the club’s patrons in the alley way on their way or as they exit the club.
  - c. Kanitra Murphy, Night Auditor for Hilton Garden Inn, who testified for the noise complaints (verified by staff and reported to police) she has received from guests of the hotel. She testified at hearing that she continues to receive those complaints. She also testified as to the cruising of patrons of the club and to blocking of traffic resulting from such activities. Most critical in her testimony, was her own personal experience as a city resident and employee of the hotel. She testified as to her own

personal request to her employer to change her work hours because of her safety concerns surrounding the club's operations and escalated violent activities.

- d. Montrell Wilder and Donielle Berry, security for Hilton Garden Inn, testified to their observations of disorderly behavior, loud noise (verified and reported to police), traffic blockage (as a result of patrons of the club).
- e. Rachel Forman, Executive Director of the Grand Avenue Club, who testified her organization was founded in the early 1990s in that same location and gives their members who are experiencing of isolation and suffering of mental illness the opportunities of housing and access to education, and job opportunities. She testified as to the difficulty of convincing members to participate in their programs in the evenings because of the club's nuisance activities. As a result of the club's operations, the organization has not expanded its hours of operations. She also testified that her building (which is next door to the club) was subject to vandalism (broken window) as a result of patrons from the club. The club promised to compensate, but has yet to follow through with their promise.
- f. John Halverson, Operations Manager for the Grain Exchange, testified and also provided an affidavit attesting that he has witnessed public urination on their building during hours of operation, fighting, brawls and increased traffic related to the patrons of the club. The club's operations and nuisance activities and escalated violent crime related to the club, substantially interferes with their ability to operate their business and presents a danger to their guests and employees.
- g. Brian Ward, a resident in the immediate neighborhood of the club, testified and provided an affidavit attesting witnessing large disorderly crowds from the 618 club and most telling is having to be escorted past police lines because of shootings.
- h. Beth Weireck, Executive Directly of downtown business district, testified the downtown area near 618 Live was impacted negatively as a result of the escalated violent crime and

nuisance-related activities occurring in the immediate area of the club's operations.

2. Downtown Neighbors Association of Milwaukee Inc. passed a resolution that "as a result of continued and on-going nuisance activity resulting in the detriment to safety, enjoyment and prosperity the DNA MKE take a position strongly supporting revocation and nuisance injunction of 618 Live on Water and support any and all efforts to reach that goal." (Exhibit 7 of Sworn Charges Complaint)
3. Since the club's license renewal, and because of ongoing nuisance activities negatively affecting area businesses, the Business Improvement District 21 (BID 21) voted to support the license revocation of the 618 Club. (Page 6, Sworn Charges Complaint).

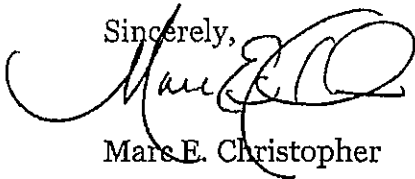
The above do not include the other affidavits by other city residents, business owners, and employees of the Hilton Hotel, included in the sworn charges complaint. Or the testimony of those other potential witness too scared to testify because of the fear of retribution.

At hearing, the past and present Captains of the Milwaukee Police Department support revocation of the club's license despite the cooperation of the licensee, and because the disorder continues and the crime has only escalated.

As Ms. Farrell and Mr. Wilson indicated in their complaint, Milwaukee City Ordinance 90-12 holds that revocation is appropriate when the premises is operated in such a manner that it constitutes a public or private nuisance or that conduct on the licensed premises, including but not limited to loud and raucous noise, has had a substantial adverse effect upon the health, safety or convenience and prosperity of the immediate neighborhood.

On behalf of Ms. Farrell and Mr. Wilson, the other city residents and businesses of the immediate neighborhood of where the club operates, those who have pled to the committee for relief and protection of their health, safety and welfare, we ask that revocation be supported by the entire Common Council. We believe the Council has sufficient evidence, including escalated crime occurrences as recent as this past summer, and more resident and business testimony supporting revocation since the club's last renewal hearing and warning letter in November 2012.

Sincerely,



Marc E. Christopher

Christopher Law Office