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June 30, 2010

Via Email Only ([rleonh@milwaukee.gov](mailto:rleonh@milwaukee.gov))  
City Clerk Ronald D. Leonhardt  
City Hall  
200 East Wells Street, Room 205  
Milwaukee, WI 53202

Re: Pop Promotions, LLC d/b/a Texture – 606 S. 5<sup>th</sup> Street, Milwaukee, WI  
Objections

Dear City Clerk Leonhardt,

Our office is Counsel to Pop Promotions, LLC d/b/a Texture (“Texture”). On June 21, 2010, the Licenses Committee (“Committee”) met to consider the renewal of Texture’s Class B Tavern and Tavern Amusement (Cabaret / Nightclub) license (“License”). The Committee voted to recommend that Texture’s License be renewed, but with a 25-day suspension based upon a police report and neighborhood objections.

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:

**THESE OBJECTIONS ARE FILED TO PRESERVE THE LEGAL RIGHTS OF POP PROMOTIONS, LLC IN THE EVENT THE FULL COUNCIL DOES NOT ADOPT THE LICENSES COMMITTEE RECOMMENDATION AND COURT ACTION IS REQUIRED**

1. Paragraph 3 of the Findings of Fact states, in part, that there were “claimed neighborhood objections to loitering, littering, loud music and noise, racing of vehicles and parking and traffic problems; congregation of unruly patrons; drug and criminal activity, including trespassing, public urination, vandalism, disorderly conduct, fights, and thefts; actions and practices of security personnel; operation of the premises in such a manner that it creates a public nuisance; and conduct which is detrimental to the health, safety and welfare of the neighborhood.”

Texture objected to this notice at the Committee hearing and there was no basis for the “claimed” neighborhood objections of loitering, traffic problems, drug and other criminal activity including trespassing, thefts, actions and practices of security personnel, and operation of premises in such a manner that it creates a public nuisance. The lone document which objected to renewal of the license was an anonymous email which could not be the basis for a hearing under 90-11-1-b, MCO.

2. Paragraphs 5A through 5M contain a recitation of the Milwaukee Police Department’s Criminal Record / Ordinance Violation / Incidents Synopsis (“Synopsis”). This recitation of the Synopsis fails to note that many of these incidents were a result of Texture flagging down or calling the Milwaukee Police Department. As testified to and acknowledged by both Alderman Kovac and Alderman Hamilton at the Committee hearing, Texture was instructed at its 2009 Committee hearing that it should not be afraid to contact the police. As testified to by Donato Salvo, Texture heeded that advice and called the police any time that something occurred, even if the situation did not require police assistance. As a result, and as acknowledged by Alderman Hamilton, Texture’s Synopsis was larger than it otherwise would have been had it not listened to the advice of the Committee.

Additionally, Alderman Zielinski made numerous comments during the Committee meeting that there were multiple incidents involving weapons at the establishment. These comments were arbitrary and not based upon the evidence contained within the record. The *only* incident which involved a weapon (a firearm) is the incident recited in paragraph 5A in which an individual (who had previously not been permitted entrance into the club) drove by and waived a firearm out the window of his vehicle. Due to the quick action of management, this individual was stopped and arrested by police.

Paragraph 5F recites an incident in which the Milwaukee Police Department accused Texture of “not being truthful” about its knowledge of an incident which occurred. While the Findings do state that Texture objected to this and that its employees had to stay until very late into the morning hours to go through video with police, the Findings arbitrarily fail to note that Texture has asked the police department numerous times about the allegation of untruthfulness, and the police have failed to provide any explanation as to this comment.

3. Paragraph 5N refers to an objecting neighbor who testified about approximately forty disturbances she suffered in 2009 in addition to the activities of club security and the parking lot activities of patrons. Upon information and belief, this paragraph is referring to Julie Kaufman. Upon information and belief, it is not possible for Ms. Kaufman to have witnessed the activity in the parking which she claimed to witness from her home. Additionally, it is not possible for Ms. Kaufman to have seen any patrons coming from Texture as her residence does not

have a direct view of the establishment. None of Ms. Kaufman's testimony or representations to the Committee should be considered as a basis for the Committee's recommendation. Any consideration of this testimony by the Committee or members of the Common Council is arbitrary, capricious, and not based upon a valid theory of law.

4. Paragraph 5O describes the testimony of an objecting neighbor. The Findings fail to state that this neighbor did not know whether he had seen seven or eight fights and only settled on seven under cross-examination. The witness could not give any specific or even general dates as to when these fights may have occurred. Any consideration of this testimony by the Committee or members of the Common Council is arbitrary, capricious, and not based upon a valid theory of law.
5. Paragraph 5P describes an edited video submitted by Jose Zarate, owner of La Fuente Restaurant. This video was strenuously objected to by Texture and Zarate had no personal knowledge whatsoever about the events contained on the video. This video contained an edited version of various clips from various evenings on 5<sup>th</sup> Street and also contained editorial comments which had been digitally inserted into the video. The most controversial portion of the video showed what Zarate claimed to be a carjacking for which he had no proof to substantiate that an actual crime happened, which occurred on 5<sup>th</sup> Street. During that portion of the video, Texture was completely out of view and it was impossible to determine whether the individuals involved in the alleged carjacking were patrons of Texture.

That in reviewing the minutes and video recording of the Committee hearing, the Committee failed to move Zarate's edited video into the record. Because the video was never moved into the record by the Committee, it is not part of the Committee's record, cannot be made part of the Findings of Fact, and must not be considered by any member of the Common Council in making their decision as to this licensee. Because the Zarate's edited video was never made part of the record, any reliance on this video for either the recommendation of the Committee or the decision of the Common Council is arbitrary, capricious, and not based upon a valid theory of law.

The Committee's decision to view this edited video was arbitrary, capricious, and not based upon a valid theory of law, as the City Attorney has previously advised the Committee that before an edited video can be shown to the Committee by an objecting witness, the Licensee must be given an opportunity to view a complete, unedited copy of the video being shown.

Legal counsel for Texture had an extensive cross-examination of Zarate planned, but this examination was inappropriately cutoff by the Committee's chairman, creating a violation of due process. This decision by the Committee Chairman to end the cross-examination was arbitrary, capricious, and not based upon a valid theory of law.

Additionally, Zarate owns several parking lots which are made available to customers of Texture. As testified to by Donato Salvo, these parking lots are staffed by Zarate's employees until they are full at which point Zarate's employees leave. Zarate charges Texture's customers to park in these lots, which is illegal under city ordinances as Texture is not an accessory use to Zarate's lot.

6. Paragraph 5R recounts observations made by Alderman Witkowiak at the Bradley Tech parking lot. These observations did not include any "parties" in this parking lot. See email from Alderman Witkowiak attached hereto.
7. That the Findings of Fact fail to recount that the Committee arbitrarily took away five minutes of presentation time from Texture. This decision by the Committee had an effect upon the presentation of Texture's case, was a violation of Texture's right to due process, was arbitrary, capricious, and not based upon a valid theory of law.
8. That the Findings of Fact fail to reflect Alderwoman Cogg's comments that the Committee is able to make a determination as to the weight that will be given to each incident contained in the Synopsis. The Findings of Fact do not provide any information as to the weight assigned to each item in the Synopsis. As a result of the Findings of Fact not explaining the weight provided to each of the Synopsis items, Texture cannot determine what facts the Committee relied upon for its decision to recommend renewal of Texture's license with a 25-day suspension. This results in a violation of Texture's right to due process. See Decision on Revocation of Tavern License from *Stojan Coralic d/b/a The Brew House v. City of Milwaukee, et al*, Milwaukee County Case No. 10-CV-1922, which has been attached hereto.
9. The Findings of Fact fail to recount the exchanges that occurred between Texture and members of the Committee regarding the Committee's prior suggestions to the licensee. Donato Salvo, on behalf of Texture, testified that he was told several years ago by the Committee to stop distributing promotional flyers throughout the neighborhood. The Committee affirmed that this suggestion was made and testimony from neighbors additionally confirmed that no flyers were being distributed. Texture is in the process of investigating how inside promotional materials which were properly thrown in the garbage were illegally removed from the garbage and ended up in the possession of a neighbor. Upon completion of this investigation, Texture will report to the members of the Common Council and the Milwaukee Police Department the individuals who participated in this behavior.

Mr. Salvo additionally explained to the Committee that at Texture's 2009 Committee hearing it was told by Committee members to retain a new security company which was licensed and insured and that it was additionally instructed to call the Milwaukee Police Department any time that something happened, even if

Texture felt that police presence was unnecessary. As Salvo explained, and the Findings of Fact fail to reflect, Texture fired its former security company and retained the services of Tower Security, a licensed and insured security company. Additionally, Texture made certain to call the police any time that an incident occurred, even though many of the incidents listed on Texture's Synopsis did not require police assistance or intervention.

10. Paragraph 5T of the Findings of Fact describes testimony from several individuals who testified in favor of the renewal of Texture's license. While Attorney Peter Donohue is mentioned, some of the specifics of his testimony are not included. Specifically, Attorney Donohue explained that he gets to his office (which is directly next door and in the same building as Texture) between 8:30 a.m. and 9:00 a.m. He further explained that he never sees any sort of litter or trash from Texture when he arrives at his office. This credible testimony from Attorney Donohue calls into question testimony from some of the objecting witnesses who claimed that Texture was the cause of a litter and trash problem in the neighborhood. Attorney Donohue additionally testified that Texture has been a very respectful and good neighbor to him.

Further, paragraph 5T fails to recount additional positive testimony from a neighbor who has lived across the street from Texture for many years and had no issues whatsoever with the establishment. Additionally, paragraph 5T fails to recount supporting testimony from Brandon Williams and Darrell Hines II who attend the establishment frequently.

11. The Licenses Committee has failed to forward *its own* report and recommendation, including Findings of Fact, Conclusions of Law, and a recommendation to the Common Council as required by § 90-11-2-c-2, Milwaukee Code of Ordinances.

Paragraph 5 of the "Findings of Fact" (contained on page 2), states that "Based upon the testimony heard and evidence received, the **Committee makes the following findings of fact**" [emphasis added]. Texture objects to this statement, as the Committee has never adopted these findings. Because the Findings of Fact and Conclusions of Law were never adopted by the Committee, it would be more properly characterized as the City Attorney's proposed Findings of Fact and Conclusions of Law. Further, based upon testimony provided under oath in *Lady Bug Club v. City of Milwaukee et al*, it is our understanding that Chairman Bohl's signature is digitally applied to the City Attorney's document, and that Chairman Bohl is typically not provided an opportunity by the City Attorney's office to review the Findings of Fact and Conclusions of Law for accuracy prior to his signature being applied and the document being disseminated to all Members of the Common Council and the applicant.

12. The City of Milwaukee's treatment of numerous other establishments, including its treatment of Pizza Shuttle at its license renewal hearing held on January 27,

2009, demonstrates that Texture's Equal Protection rights as guaranteed under the United States Constitution were violated.

Attached hereto and incorporated herein are police reports for establishments known as Quarters (hearing on 6/2/10), Discount Cigarettes & Beer (hearing on 5/10/10), and Bosses Lounge (hearing on 4/20/10).

Quarters is a tavern located on Center Street. It had three new items on its police report (a fourth item was included but this item consisted of a summary of a meeting between MPD, the tavern owner, and the tavern's attorney). These incidents included a citation for patrons dancing when there was no tavern dance license, a shots fired complaint, and a *murder*. The murder occurred in front of the tavern with the victim having received multiple wounds to the head and back. MPD determined through the tavern's surveillance cameras that the victim and suspect were both at the tavern and left shortly before the murder occurred. This video also showed that the suspect had been armed while inside the tavern. Quarters' license was recommended for renewal by the Committee with a 30-day suspension.

Discount Cigarettes & Beer is located on 27<sup>th</sup> Street. It had four new items on its police report. These incidents included a citation for sale to underaged, an allegation of sale to underaged, a second citation for sale to underaged, and a third citation for sale to underaged. Discount Cigarettes & Beer's license was recommended for renewal by the Committee with a 30-day suspension.

Bosses Lounge is located on North Avenue. It had six new items on its police report. These items included a battery complaint, an incident in which an individual drove by the tavern and waived a gun out the vehicle window, two false hold up alarms, a fight that occurred between patrons after leaving the bar, a citation for presence of underaged, and a shooting incident in which five people were wounded. Bosses Lounge's license was recommended for renewal by the Committee with a 20-day suspension.

On January 27, 2009, the Licenses Committee held a hearing to consider the renewal of Pizza Shuttle, 1827 N. Farwell Avenue. Pizza Shuttle had an extensive police report. Attached to this letter is a copy of Pizza Shuttle's police report. Pizza Shuttle's report contained a total of 26 items, including 25 from 2008. In addition, Pizza Shuttle's CADS reports, obtained through the MPD, show that there were approximately 100 police calls related to the establishment between November 2007 and January 2009. There are numerous incidents in the Pizza Shuttle report that presented valid cause for concern. For example, the report recounts numerous fight complaints, numerous issues with guns, complaints of loud music from cars, cars being used to block traffic, disorderly patrons, and drugs. In fact, incident No. 24 on Pizza Shuttle's police report required the MPD to be on scene for almost two hours, involved multiple fights and also involved hundreds of patrons who were spectators and encouraged the

fighting. Incident No. 24 states at its conclusion, "Police did speak with management regarding the volume of calls received by the restaurant and that no other businesses in the area have needed this type of police response."

In spite of this extensive police report, the MPD did not object to renewal of the license and the City Attorney's office made no appearance at the hearing to oppose the license renewal or assist the MPD. It is also remarkable that despite the high volume of police calls to Pizza Shuttle, the property received no nuisance letters from the City of Milwaukee.

As stated *supra*, Pizza Shuttle had 25 items on its police report that were considered at the 2009 hearing. In reviewing this police report (which is also attached), 24 of the incidents occurred between February and July. The 25<sup>th</sup> and final incident occurred on October 18<sup>th</sup>, and was a situation in which juveniles were "trashing" the dining room and yelling obscenities.

In summary, Texture objects to the Findings of Fact and Conclusions of Law. In violation of § 90-11-2-c-2, Milwaukee Code of Ordinances, the Licenses Committee has never adopted the Findings of Fact and Conclusions of Law which were drafted by the City Attorney. The reasons relied upon for the 25-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 as identified *supra*.

In violation of 90-11-1-c-1, CMO, and over the objection of Texture, the Committee held a renewal hearing when Texture clearly met the requirements for automatic renewal with the issuance of a warning letter. The Committee's failure to adjourn the hearing, and forward the matter of Texture's license renewal directly to the Common Council for renewal with the issuance of a warning letter pursuant to 90-11-1-c-1, CMO, was arbitrary, capricious, and not based upon a valid theory of law.

Finally, and most importantly, Texture's rights to Due Process and Equal Protection have been violated by the actions of the Licenses Committee. In violation of Texture's right to Due Process, Texture was not permitted to fully cross-examine the most important witness at the hearing, Jose Zarate, the Committee allowed an inappropriate edited video to be viewed, the Committee arbitrarily took away five minutes of presentation time from Texture, and the Committee illegally convened a renewal hearing when no valid objection to renewal had been filed and Texture clearly met the requirements for automatic renewal with the issuance of a warning letter under 90-11-1-c-1, CMO. Additionally, in comparison to other establishments where more serious incidents occurred, including shootings and a murder, Texture's right to Equal Protection has been violated as it has been recommended for as much, if not more punishment than those establishments.

Please note that we have drafted and attached proposed Findings of Fact for the Licenses Committee to consider.

Thank you for your attention to this matter.

Pop Promotions, LLC d/b/a Texture  
Objections to Findings of Fact and Conclusions of Law  
June 30, 2010

Sincerely,



David R. Halbrooks  
Attorney at Law

DRH/abd

Enc.

Cc: Pop Promotions, LLC d/b/a Texture  
Members of the City of Milwaukee Common Council (via email w/enclosures)



**Lee, Chris**

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**From:** McGuire, Michael  
**Sent:** Monday, February 15, 2010 10:43 AM  
**To:** Grill, Rebecca  
**Subject:** FW: Texture / Bradley Tech parking issues  
For the file re: Club Texture.

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**From:** James N. Witkowiak [mailto:jwitkowiak@witkowiak.com]  
**Sent:** Monday, February 15, 2010 10:28 AM  
**To:** McGuire, Michael  
**Subject:** Texture / Bradley Tech parking issues

Mike,  
I drove past Texture at about midnight Sat. night and then went to inspect the Bradley Tech parking lot. The lot was OPEN. The gate was locked in the OPEN position and there were several cars parked in the lot (aprox 25 ). I also personally observed some people parking there and then walking over to Texture.

So...either Tech dosen't care and/or Texture is not policing the area to see that their customers are parking there.

But... I care. This is what is causing a lot of the problems for some of the neighbors.

Please contact Tech about keeping that gate locked when not in use by the school and send a copy of this to license division for the file.

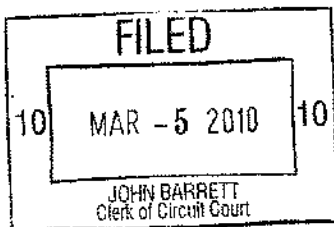
Thanks,  
Jim

2/15/2010

**Stojan Coralic, d/b/a The Brew House**

**Plaintiff,**

**vs.**



**Case No. 10CV1922**

**City of Milwaukee, et al.,**

**Defendants,**

**Decision on Revocation of Tavern License**

This matter is before the court on certiorari review of a decision by the City of Milwaukee Common Council to revoke the liquor license of The Brew House (Brew House). The court issued a temporary restraining order and then scheduled the matter for hearing. At the hearing on February 19, 2010 the parties introduced evidence through testimony of witnesses in addition to the record of the proceedings before the Licenses Committee and the Common Council.

For the reasons stated below the court finds that the Licenses Committee and the Common Council did not act according to law by failing to provide plaintiff with the requisite due process in revoking the Tavern License. Therefore, the court will vacate the order revoking the Tavern License and remand the matter to the Licensing Committee for an appropriate hearing consistent with the court's ruling.

Applicable Standard of Review

The parties agree that the standard of review on certiorari review by the court is limited to a determination of whether:

1. The administrative body kept within its jurisdiction;
2. Whether it acted according to law;
3. Whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and
4. Whether the evidence was such that it could reasonably make the order or determination in question.

The reviewing court may not substitute its judgment for the discretion of the administrative body.

The parties further agreed that although certiorari review is generally based upon the record before the administrative agency that it was appropriate for the parties to introduce additional evidence before the court during the hearing. However, they agreed that such evidence would be limited to evidence that was relevant to the four factors stated above.

This court's decision is based upon the second factor: Whether the administrative bodies acted according to law. "The phrase 'acted according to law' has been interpreted as including 'the common-law concepts of due process and fair play.'" *Marris v. City of Cedarburg*, 176 Wis. 2d 14 (1993).

#### Facts Relevant to the Court's Decision

Although the parties argue the facts about the sufficiency of the evidence before the Licenses Committee and the Common Council the court is limiting its reference to facts that involve the issue of whether Brew House was provided a fair hearing.

Pursuant to the applicable city ordinance Alderman Tony Zielinski initiated a sworn complaint regarding the Brew House entitled "sworn charges for revocation of license" requesting that the tavern license be revoked. The complaint identified the reasons for the requested revocation and specified facts that he asserted justified the revocation. The Licenses

Committee held a hearing on the complaint on January 19, 2010. This was an evidentiary hearing at which witnesses testified before the committee.

At the hearing Alderman Zielinski participated as the complainant and advocate for revocation. At the beginning of the hearing the Chair of the Committee Alderman James Bohl stated, "Alderman Zielinski, we will – you are the complainant, we will turn this over to you." Ex. 9, p. 7. Alderman Zielinski advised the chairman that he wanted to defer his comments until after people in the audience had an opportunity to testify regarding their first hand knowledge. Ex. p.11. He then proceeded to call witnesses to testify. However, chairman Bohl was in charge of the hearing. When the Brew House's attorney objected to the testimony of a police captain it was Alderman Zielinski who argued that the testimony was relevant. Alderman Zielinski specifically questioned the captain asking if he believed the license should be revoked. Additionally, when the Brew House called witnesses to testify Alderman Zielinski cross examined those witnesses.

Finally, the chairman stated "I'm going to allow closings to be provided here by Alderman Zielinski and Mr. Shikora." He then allowed Alderman Zielinski to proceed first because "...you're making the case here..." Ex. 9, p. 93. Mr. Zielinski then proceeded to make a closing argument in favor of revoking the license. Although he is a member of the Licenses Committee, at the time of the vote by the committee, Alderman Zielinski did not vote. The Brew House does not object to Alderman Zielinski's conduct or role at the Licenses Committee.

Subsequent to the vote by the committee in favor of revoking the Tavern License the City Attorneys Office was directed to prepare findings of facts and conclusions of law in support of the revocation of the license. The draft of the findings and conclusions was reviewed by a staff assistant for the committee and Chairman Bohl's signature was electronically placed on the document. Neither he nor any member of the committee reviews the findings and conclusions

prior to his signature being placed on them. Copies of the findings are then distributed to all the members of the Common Council.

The Common Council held a hearing on February 9, 2010. Alderman Zielinski did not play a significant role in the discussions regarding the Common Council's vote, but he did vote in favor of revocation of the license. At the evidentiary hearing before this court Chairman Bohl testified that as a member of the Common Council he voted to revoke the tavern license not only for the reasons stated in the findings and conclusions of the committee, but based upon all the evidence introduced before the committee.

#### The Licensing Committee's Findings were Not Complete

The Brew House raised other issues regarding the hearing before the Licenses Committee, but the court finds that the committee's findings and conclusions were not complete and the court cannot determine if those findings formed the basis for the committee's vote in favor of revocation or if the committee relied on additional facts. In *Lamar Cent. Outdoor, Inc. v. Board of Zoning Appeals of the City of Milwaukee*, 2005 WI 117, 284 Wis. 2d 1, ¶32, the court explained that the decision of the administrative body must contain the reasons for the action taken by the body. The court went on to state that "Without a statement of reasoning, it is impossible for the circuit court to meaningfully review a board's decision..." ¶32

In this case the Licenses Committee does not review or sign the findings and conclusions of the committee which are drafted by the City Attorneys Office. Although each member of the committee receives a copy of the findings prior to the Common Council hearing on the issue and each Alderman must state on the record that they have read the findings, this court cannot say whether the findings accurately reflect the decision of the committee. At the evidentiary hearing before this court Chairman Bohl testified that he did not vote in favor of revocation based solely on the findings of fact in the committee's decision, but rather upon all the facts introduced at the

hearing before the committee. Alderman Robert Puente also testified before the court and stated that he voted to revoke the tavern license based upon the findings of the City Attorneys Office, but that based on his experience as an alderman, not all the evidence makes it into the findings. He however was not a member of the Licenses Committee but he did state that he saw the testimony and video tape taken by the citizen.

Therefore, neither this court nor Brew House can determine what facts the committee relied on in support of its vote to revoke the tavern license. Due process and fair play require that the administrative body state the reasons for its decision in fairness to the party subject to the vote and so that the circuit can meaningfully review that decision.

Other objections that Brew House raises to the committee's hearing do not invalidate the committee's hearing process. Alderman Zielinski properly signed the complaint. It was filled with both information that he personally knew to be true and also information that he stated upon information and belief. Both are permitted by city ordinance. Therefore, there were no defects in the complaint.

The committee may rely on hearsay statements in making its decision. However, uncorroborated hearsay alone does not constitute substantial evidence. In *Gehin v. Wisconsin Group Ins. Bd.*, 2005 WI 16, 278 Wis. 2d 111, 136, the court explained that "The rule that uncorroborated hearsay alone does not constitute substantial evidence allows an agency to utilize hearsay evidence while not nullifying the relaxed rules of evidence in administrative hearings. The rule prohibits an administrative agency from relying *solely* on uncorroborated hearsay in reaching its decision." The evidence before the committee was a mix of hearsay and testimony upon personal knowledge.

The Brew House also objected to the introduction of a video tape of an incident outside the Brew House. It was brought to the hearing by a witness who observed the incident and was

going to testify about the incident in any event. The complaint identified the incident as a basis for revoking the tavern license. Due process requires adequate notice of the charges or reasons for revocation; it does not require prior notice of all evidence that would be introduced.

The Vote by the Common Council was Tainted by Alderman Zielinski's Participation and Votes of the Committee Members on Facts not in the Findings

Due process requires an impartial decision maker. *State ex rel DeLuca v. Common Council*, 72 Wis. 2d 672 (1976). However, an administrative body may qualify as an independent decision maker in respect to the merits of charges that it initiated and investigated. *Withrow v. Larkin*, 421 U.S. 35 (1975). The objector to the impartiality of a body must overcome "...the presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden." *Deluca*, id. at 684.

In *Deluca* the court reasoned that if the combined charging and investigation functions are equivalent to the role of a judge who makes findings of probable cause and later hears the case on the merits, the administrative body may be impartial. However, as noted in *Deluca* "Nevertheless, the combination of bringing the charges and being an adjudicator could result in an intolerably high risk of unfairness if it could be said that this essentially converts the charge bringer into the role of prosecutor." Id. at 688. The court went on to note that the Supreme Court in *Larkin* held that there may be circumstances that "...raise a sufficiently great possibility that the adjudicators would be so psychologically wedded to their complaints that they would consciously or unconsciously avoid the appearance of having erred or changed position." Id. at 688.

Additionally, in *Marris v. City of Cedarburg*, 176 Wis. 2d 14, 26 (1993), the court held that “If any board member prejudged the facts or the application of law, an impermissibly high risk of bias was created.” The court further stated that “A clear statement, suggesting that a decision has already been reached, or prejudged, should suffice to invalidate a decision.” *Id.* at 26.

In this case, Alderman Zielinski’s role before the Licenses Committee was that of the prosecutor. Because he fulfilled that role he properly recused himself from participating as a committee member and from voting. However, as a member of the Common Council Alderman Zielinski was required to recuse himself from participating in the hearing on the revocation of the tavern license which he prosecuted before the committee. He investigated the complaints, brought the charges and prosecuted the hearing, advocating for revocation of the license. At that hearing he made a strong argument imploring the committee to revoke the license.

His combined roles and strong statements advocating revocation of the tavern license constitute clear statements suggesting that he already reached his decision and prejudged the matter before the hearing began. He should not have participated in the hearing before the Common Council and his participation taints the vote of the entire council.

Additionally, as noted above, Chairman Bohl testified that his vote before the Common Council was not limited to the findings and conclusions that stand as the decision of the Licenses Committee. Rather, he stated that his vote was based upon all the evidence at the hearing, not just the findings and conclusions with his signature. Alderman Puente also testified that votes are not always based solely upon the findings and conclusions because all the evidence does not always make its way into the findings. This does not mean that the committee must identify all the evidence introduced at the hearing and state whether it is relying on each bit of evidence. For instance Brew House argues that the findings are defective because they do not include a



statement by the police captain that things had improved. That evidence need not be included, but the entire factual basis on which the committee relies for reaching its decision must be identified and members cannot rely on other information not included within the findings.

As noted above the committee's decision must identify the basis for its decision in fairness to the parties involved and so the circuit court can meaningfully review the decision. Here, neither the court nor Brew House can discern the facts the Licenses Committee or its members relied on in voting to revoke the tavern license in their votes at the committee level or at the board level.

NOW THEREFORE, IT IS ORDER, for the reasons stated above, that:

1. The decision of the Common Council revoking the Brew House tavern license is vacated;
2. The decision of the Licenses Committee recommending revocation of the Brew House tavern license is vacated; and
3. The matter is remanded to the Licenses Committee for a new hearing in conformance with this court's decision.

March 5, 2010

By the Court:  
TIMOTHY G. DUGAN

Hon. Timothy G. Dugan  
Circuit Judge Br. 10

**FOR PURPOSES OF APPEAL THIS IS THE FINAL ORDER OF THE COURT, NO FURTHER ORDERS ARE CONTEMPLATED BY THE COURT, AND THE CLERK SHALL ENTER JUDGMENT BASED UPON THIS ORDER.**

MILWAUKEE POLICE DEPARTMENT  
LICENSE INVESTIGATION UNIT

CRIMINAL RECORD/ORDINANCE VIOLATION/INCIDENTS  
SYNOPSIS

DATE: 04/08/10

LICENSE TYPE: BTAVN

NEW:

RENEWAL: X

No. 16663

Application Date: 04/07/10

Expiration Date:

License Location: 900 E Center St

Business Name: Quarters

Aldermanic District: 03

Licensee/Applicant: Fischer, Daniel R

(Last Name, First Name, MI)

Date of Birth: 07/11/1952

Home Address: 902 E Center St

City: Milwaukee

Home Phone: (414) 263 - 8950

State: WI

Zip Code: 53212

This report is written by Police Officer Kristyn KUKOWSKI, assigned to the License Investigation Unit, Days.

The Milwaukee Police Department's investigation regarding this application revealed the following:

1. On 04/15/2005 at approximately 10:40PM, an underage police aide, under the direction of police officers was able to purchase a 12oz. Bottle of Miller Draft Beer from the cashier, Cherissa L Fischer (W/F, 03/0-5/1984) of Quarters Bar at 900 E Center St. There was no one at the entrance checking for underage persons prior to entering the licensed premise.

As to the Licensee: FISCHER, Daniel R

1. Charge: Sale of Alcohol to Underage Person  
Finding: Guilty Suspended Sentence  
Date: 06/09/2005  
Case #: 05052002
2. Charge: Presence of Minor Prohibited  
Finding: Guilty  
Date: 06/09/2005  
Case #: 05052003

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Fischer, Daniel R

3. On 02//17/10 at 1:30 am, Milwaukee police conducted a License Premise Check at 900 E Center Street. Officers observed approximately twelve patrons dancing on the dance floor and found the tavern not to have a tavern dance license. Police spoke to the bartender Cherissa Fischer who stated she was also co-owner of the tavern. Cherissa was advised by officers that a dance license was required and a citation was issued to the licensee Daniel Fischer.

Charge: Tavern Dance License Required

Finding: Pre-trial 05/24/10 8:30 am

Sentence:

Date:

Case: 10032143

4. On 03/20/10 at 1:21 am, Milwaukee police were dispatched to 900 E Center for a Shots Fired complaint. An anonymous caller stated shots had been fired inside the Quarters tavern. Police spoke to the bartender Cherissa Fischer who stated there were no shots fired but that two patrons were arguing with one another and were escorted out of the bar. Police did not find any evidence supporting shots being fired. Call was advised.
5. On 03/28/10 at 1:50 am, Milwaukee police were dispatched to Bremen and Center for a Shooting complaint. Arriving officers observed a male lying on the ground in front of Quarters tavern with multiple gun shot wounds to the head and back. The victim later died from his wounds. Officers questioned the bartender Cherissa Fischer if the victim had been in the tavern prior to the shooting and Fischer stated no. Fischer further stated that she heard shots fired and observed a victim outside the bar. Fischer stated she then called police from her cell phone. Upon viewing the bar's surveillance video, police determined that the victim and suspect were both patrons in the bar and were observed leaving the tavern shortly before the shooting occurred. Police also found that surveillance video showed the suspect had been armed while inside the bar. Five casings were recovered at the scene and placed on inventory.
6. On 03/29/10 at 2:15 pm, the owner of Quarter's Night Club, Daniel Fischer, and his attorney Andy Arenas, met with District Five personnel regarding the homicide that occurred outside of his business. The meeting took place at District Five and in attendance was Assistant City Attorney Adam Stevens, Assistant City Attorney Ben Wesson, Lieutenant Michael Brunson as well as a few police officers. Mr. Fischer relayed that his business is open on Wednesdays, Thursdays, Fridays and Saturdays and that he usually opens the bar up at 9:30 pm. Mr. Fischer stated he tries to shut down the tavern approximately one hour prior to closing time. Fischer further stated that he has 4 to 5 employees and that two of his children help manage and bartend. He further stated he has two security guards. Fischer stated he charges between three to five dollars for a cover charge and that he has two interior cameras, one of which is connected to a recording system. Fischer stated he has seven cameras on the exterior and that he monitors the tavern from his residence, which is the upper portion of the tavern. Fischer stated that up to a month ago, his crowd was generally neighborhood individuals, however due to the fact that other establishments have closed in the past month, he is seeing a lot of new faces.



4. On 02/25/10 at 4:23 pm, Milwaukee police were conducting Sales of Alcohol to Underage Persons and had a Milwaukee police aide, who is under the age of 21, along with an uncover police officer enter 5320 S 27<sup>th</sup> Street in attempts to purchase alcohol. The aide brought a 30 pack of Milwaukee's Best to the counter and the cashier identified as Rajesh Patel asked for ID in which the aide provided. Patel stated to the aide that he was underage and if he was a cop, stating "cops are in here all the time to check up". The aide responded no and Patel took his money. When the aide ask for his change, Patel stated, " You are under 21 and don't get no change". Patel was then questioned by police and when asked why he sold the alcohol, Patel stated, " I checked ID". Patel was issued a citation for Sale to Underage 2<sup>nd</sup> offense.

Charge:	Sale of Alcohol To Underage 2 <sup>nd</sup> Offense
Finding:	Guilty
Sentence:	Fined \$368.00
Date:	04/21/10
Case:	10036647

MILWAUKEE POLICE DEPARTMENT  
LICENSE INVESTIGATION UNIT

CRIMINAL RECORD/ORDINANCE VIOLATION/INCIDENTS  
SYNOPSIS

DATE: 02/08/10

LICENSE TYPE: BTAVN

NEW:

RENEWAL: X

No. 16451

Application Date: 01/27/10

Expiration Date:

License Location: 408 E North Avenue

Business Name: Bosses Lounge

Aldermanic District: 06

Licensee/Applicant: Harris, Tommy L

(Last Name, First Name, MI)

Date of Birth: 01/08/67

Male:

Female:

Home Address: 2737 N 59<sup>th</sup> Street

City: Milwaukee

State: WI

Zip Code: 53210

Home Phone: (414) 313-4233

This report is written by Police Officer Kristyn Kukowski, assigned to the License Investigation Unit, Days.

The Milwaukee Police Department's investigation regarding this application revealed the following:

1. On 09/13/95, applicant was charged with 1<sup>st</sup> Degree Intentional Homicide Party To in Milwaukee County. On 02/09/96, the charge was amended to Disorderly Conduct Party To/ Use Of Dangerous Weapon.

Charge: Disorderly Conduct Party To/Use of Dangerous Weapon  
Finding: Convicted  
Sentence: 8 months HOC  
Date: 02/09/96  
Case: 95CM001876

- =====
2. On 07/30/09 at 11:17 am, Milwaukee police were dispatched to 2725 W Auer Street for a Battery complaint. Officers spoke to the victim who stated he and friend were at Bosses Lounge when the victim noticed a known patron "mean mugging" him. This patron then came up to the victim and started punching him in the face and head area. The victim stated the suspect was demanding his wallet but that he (the victim) refused to give it up. The victim stated he then heard the suspect tell another guy to get the victims wallet and felt someone going through his pockets. The victim then fell to the ground and where he was kicked several more times. The suspects obtained the victim's wallet and cell phone and fled the bar. Officers on a later date contacted and spoke to Tommy Harris regarding the incident. Harris stated he was working the night of the incident and wasn't aware of any problems. Officers also spoke to the bartender Rebecca Moses, who is no longer employed at Bosses. Moses stated she couldn't recall the incident and that there have been so many fights inside the bar, she can't remember one incident from the other. The suspect was ordered into the DA's office regarding possible charges. As of 01/28/10, a check of CCAP revealed no charges were issued.

3. On 10/30/09 at 1:29 am, Milwaukee police were dispatched to 408 E North Avenue for a Man With Gun complaint. Officers spoke to Michael Williams who stated he works security for Bosses Lounge and that he observed a late model black Infiniti pull up in front of the tavern as a subject waved a gun from the passenger side window. Squads that were in area found a car matching the description and conducted a traffic stop with no gun being found. A wanted check revealed one occupant had an outstanding warrant and he was arrested and conveyed to the district.
4. On 11/05/09 at 1:25 am, Milwaukee police were dispatched to 408 E North Avenue for a Hold Up Alarm. Officers spoke to Tommy Harris who stated there were several females fighting across the street from the bar and that one of his employees might have pushed the hold up alarm. Harris stated the females left before police arrived.
5. On 12/26/09 at 2:31 am, Milwaukee police were dispatched to 408 E North Avenue for a Hold Up Alarm. Officers spoke to the bartender Kamona Dixon who stated there were no problems.
6. On 01/14/10 at 12:41 am, Milwaukee police were dispatched to 2244 N Buffum Street for a Fight complaint. Upon police arrival, officers observed a large fight/argument in the vicinity of North and Buffum. Officers stopped one of the actors and conducted a field interview. Police found this subject to be in possession of .38 special Smith & Wesson and placed the actor under arrest. The suspect stated to police that there was no fight going on just a verbal argument with a couple of people after leaving the tavern located at 407 E North.
7. On 01/21/10 at 1:27 am, Milwaukee police were dispatched to 400 E North Avenue for a Shooting complaint. Upon arrival, officers found a victim who was shot to the back. The victim, who is under the age of 21, stated he was at Bosses when he got into a fight. The victim further stated as he was leaving the tavern, he heard gunshots and then felt pain to his lower back. Officers were able to confirm the victims' presence in the tavern by viewing video that was recorded by the tavern. Further investigation found an additional 4 victims who sustained gunshot wounds as a result from the fight inside the tavern. Victim # 2 sustained a gunshot to the left foot. Victim # 3 sustained a gunshot wound the right foot. Victim # 4 sustained a gunshot wound to the right hip and victim # 5 sustained a gunshot to the abdomen. A bullet also struck the window of the Development Day Care, which is located at 413 E North Avenue. This day care is located across from Bosses Lounge. A house located at 2244 N Buffum was also struck by gunfire as four occupants were sleeping inside. Officers interviewed a resident who stated he was awoken by loud shouting and then an unknown amount of gunfire. The resident further stated that there are problems at Bosses Lounge every Wednesday night. The licensee Tommy Harris was cited for Presence of Underage.

Charge: Presence of Underage  
Finding: Court date of 03/15/10  
Sentence:  
Date:  
Case: Citation # 60877736

MILWAUKEE POLICE DEPARTMENT  
LICENSE INVESTIGATION UNIT

CRIMINAL RECORD/ORDINANCE VIOLATION/INCIDENTS  
SYNOPSIS

DATE: 12/03/08

LICENSE TYPE: BTAVN

NEW:

RENEWAL: X

No. 15252

Application Date: 12/02/08

Expiration Date:

License Location: 1827 N Farwell Avenue

Aldermanic District: 03

Business Name: Pizza Shuttle

Licensee/Applicant: Gold, Mark H

(Last Name, First Name, MI)

Date of Birth: 01/08/63

Male:

Female:

Home Address: 915 W El Patio Lane

City: Mequon

State: WI

Zip Code: 53092

Home Phone:

This report is written by Police Officer Kristyn Kukowski, assigned to the License Investigation Unit, Days.

The Milwaukee Police Department's investigation regarding this application revealed the following:

1. On 10/21/07 at 3:00 am, Milwaukee Police were dispatched to Farwell and Royall Streets for a Fight complaint. Investigation revealed a fight had occurred inside the Pizza Shuttle that continued onto the streets. As police arrived, the fight dispersed with the victim not wanting to prosecute the unknown subject who had struck him. While investigating the fight on the street, officers received another call from Pizza Shuttle regarding another fight. Officers responded and issued two citations to the patrons for Disorderly Conduct.  
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2. On 02/10/08 at 3:13 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Squads responded and advised the incident.
3. On 02/20/08 at 3:00 am, Milwaukee police were dispatched to 1827 N Farwell for Trouble With A Subject. Police spoke to the manager Don who stated he was having trouble with a customer causing a disturbance. Squads responded and advised the incident.
4. On 02/24/08 at 2:12 am, Milwaukee police were dispatched to 1827 N Farwell for a Subject With Gun complaint. An employee Chad advised the telecommunicator that security for the restaurant had broken up a fight and that a subject was seen with a silver firearm by security personnel. An ambulance was also requested for a female patron who was trampled by the suspect as he fled the scene. Reports were filed regarding this incident.



5. On 03/02/08 at 2:27 am, Milwaukee police were dispatched to 1827 N Farwell for an Indecent Exposure complaint. Police spoke to security for Pizza Shuttle who stated they were detaining a male that had urinating on the building. The subject was cited for Disorderly Conduct and released.
6. On 03/15/08 at 1:13 am, Milwaukee police were dispatched to 1827 N Farwell for a loud music complaint. The caller stated subjects were playing loud music in the parking lot of Pizza Shuttle. Officers arrived and were unable to locate any subjects on the lot playing loud music.
7. 03/16/08 at 2:53 am, Milwaukee police were dispatched to 1827 N Farwell for a Trouble With Subject complaint. Officers spoke to an employee "Bill" who stated he had three armed security guards at the door of his restaurant and that several subjects outside this business were making gestures as if they were armed with guns. "Bill" stated these subjects also were saying that " There is going to trouble if they are not allowed into the restaurant." No gun was found on scene by any patron however one subject was cited for Trespassing.
8. On 03/20/08 at 2:36 am, Milwaukee police were dispatched to 1827 N Farwell for a Trouble With Subject complaint. Officers spoke to the manager "Bill" who stated three subjects were yelling and swearing at him refusing to leave. "Bill" also indicted that the subjects were intoxicated. The incident was advised.
9. On 03/27/08 at 12:46 am, Milwaukee police were dispatched to 1827 N Farwell regarding several calls about males in front of the restaurant that appeared as if they were about to drag race their autos. Calls were also received about several subjects in front of the Pizza Shuttle possibly arguing. The manager "Bill" also called police and stated that there were thirty autos blocking traffic and that subjects were running in the streets and playing music. Squads responded and the area was eventually cleared.
10. On 03/29/08 at 3:52 am, Milwaukee police were dispatched to 1827 N Farwell for Trouble With Subjects complaint. Investigation revealed a group of subjects were at the restaurant arguing and refusing to leave. Once police arrived all parties involved were gone.
11. On 03/30/08 at 2:06 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Police spoke to an employee, Sharin, as well as security who stated a large group had gathered and were fighting in the parking lot of the restaurant. The subjects involved were gone once police arrived.
12. On 04/05/08 at 1:28 am, Milwaukee police were dispatched to 1827 N Farwell for a Trouble With Subject complaint. The call was advised but police ended up writing parking citations for several parking violations found. Police were dispatched again at 4:23 am for subjects that refusing to leave the restaurant. Once police arrived, subjects were gone.
13. On 04/19/08 at 1:06 am, Milwaukee police were dispatched to 1827 N Farwell for Crowd Control at the restaurant. Security personnel requested MPD for a large crowd that gathered outside of the location. Police arrived and cleared the area.

14. On 05/04/08 at 3:32 am, Milwaukee police were dispatched to 1827 N Farwell for a Large Fight complaint. A security guard for the restaurant was injured and had sustained lacerations to the knee and elbow while trying to break up a fight. A report was filed.
15. On 06/23/08 at 1:02 am, Milwaukee police were dispatched to 1800 N Farwell for a Fight complaint. Police arrived and observed numerous subjects standing in and around the Pizza Shuttle restaurant as well as multiple autos stopped in traffic. Due to heavy pedestrian and vehicle traffic, more squads were dispatched to help assist clearing the area. Four traffic citations were issued and the area was eventually cleared.
16. On 05/17/08 at 3:38 am, Milwaukee police were dispatched to 1827 N Farwell Avenue for traffic control. When squads responded they did not locate any autos.
17. On 05/25/08 at 2:10 am, Milwaukee police were dispatched to 1827 N Farwell Avenue for a Trouble With Subject complaint. Police were advised that a patron was refusing to leave but upon officers arrival, the subject left. Squads were again dispatched to the restaurant at 2:39 am regarding a Fight In Progress in which security was detaining subjects. Citations were issued to the parties involved.
18. On 05/31/08 at 1:28 am, Milwaukee police were dispatched to 1827 N Farwell Avenue for a Fight complaint. Security was reporting that 300 plus people were at the location and that there was a fight. The caller stated they had only four security guards and needed more help. Updated calls were given to responding squads that indicated that a male was armed with a revolver. As police approached, they observed security has an auto stopped in the street at gunpoint. Police issued several citations and a report was filed regarding the subject who was armed and fled the restaurant.
19. On 06/01/08 at 1:53 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Investigation revealed people were fighting outside the restaurant and in the parking lot. A victim was identified but he refused to prosecute.
20. On 06/07/08 at 1:00 am, Milwaukee police were dispatched to 1827 N Farwell for reports of Shots Fired and Cruising. Squads responded and were not able to locate any suspects. Police were dispatched again at 2:05 am for a complaint of Battery- DV related. Investigation found security personnel used pepper spray on a suspect that was unrelated to the Battery DV complaint. Reports were filed. Police again were dispatched at 3:26 am, for another Battery complaint between two patrons and citations were issued in the incident.
21. 06/16/08 at 1:08 am, Milwaukee police were dispatched to 1827 N Farwell for a Loud Music complaint. Squads were advised that there were 20-30 subjects outside of the restaurant crowding the streets playing loud music and getting in and out of their cars. Squads responded and cleared the area. At 1:35 am, police were flagged down by an employee of Pizza Shuttle about patrons causing problems inside the restaurant. Police again responded and at the request of management, ordered everyone that was inside the restaurant to leave if they were not ordering food. It should be noted an underage party was held downtown that ended up with numerous patrons from that club going to Pizza Shuttle. On that particular night, the restaurant did not have security personnel on scene.

22. On 06/20/08, Milwaukee police were dispatched to 1827 N Farwell for a Trouble With Subject complaint. Police spoke to Christopher Albert, security for Pizza Shuttle who stated patrons who were intoxicated were refusing to leave the property. Albert stated these patrons were screaming profanities and police were called. Citations were issued to two patrons for Trespassing and one citation was issued for Obstructing An Officer.
23. On 06/17/08 at 1:40 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Police spoke to security who stated there was a verbal altercation in the parking lot between two females. When security approached these two women, one subject's boyfriend jumped in and became loud and disorderly to the security guards. Security asked these subjects to leave but they refused. One citation was issued for Disorderly Conduct.
24. On 07/06/08 at 1:12 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Investigation revealed a fight took place in the parking lot of Pizza Shuttle with approximately 200-300 people scattered though the waiting area of the restaurant. These patrons appeared to be spectators to the fight and were egging the participants on. A report for property damage was also taken. While on scene, police were advised of another fight inside the mens room of the restaurant. Both subjects involved in that were cited for Disorderly Conduct. While police were issuing citations for the fight, security again advised police of a verbal confrontation between other patrons in which security tried to break up but that both parties directed their anger at security. Officers advised these two subjects to leave or they would both receive citations. They left without incident. Police were on scene for 1 hour and 41 minutes. Police did speak with management regarding the volume of calls received by the restaurant and that no other businesses in the area have needed this type of police response.
25. On 07/07/08 at 1:00 am, Milwaukee police were dispatched to a Fight at 1827 N Farwell. Investigation revealed security was detaining four subjects who were observed in an auto parked in the parking lot of Pizza Shuttle with one actor being in possession of marijuana. Police arrested and charged one actor with Possession of Marijuana.
26. On 10/18/08 at 1:01 am, Milwaukee police were dispatched to 1827 N Farwell for A Trouble With Subject complaint. Police spoke to the manager William Kopatichi who stated a group of club juveniles entered his business causing a disturbance in and around the restaurant. Kopatichi stated the juveniles were trashing the dining room area while yelling obscenities and arguing outside of the restaurant so he called police. The subjects were gone upon police arrival. Police observed that no security was on scene of the business. Kopatichi stated that the owner cancelled security services and was in the process of contracting with a new company. No citations were issued regarding the incident.

City of Milwaukee:

Before the City of Milwaukee Licenses Committee

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IN THE MATTER OF the renewal application of Pop Promotions, LLC d/b/a Texture, for renewal of its Class B Tavern and Tavern Amusement (Cabaret / Nightclub) licenses

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**FINDINGS OF FACT OF THE LICENSES COMMITTEE**

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1. Salvatore Salvo, as agent for Pop Promotions, LLC (hereinafter the "Licensee") is the holder of a Class B Tavern and Tavern Amusement (Cabaret / Nightclub) licenses for the premises known as 606 South 5<sup>th</sup> Street in the City and County of Milwaukee, Wisconsin. This premise is known as Texture. Said licenses expire at midnight on July 25, 2010.

2. An application to renew said license was timely filed with the Office of the City Clerk on April 15, 2010.

3. Pursuant to Chapter 90 of the Milwaukee Code of Ordinances, the matter was referred to the Milwaukee Police Department for investigation. As stated by Sergeant MacGillis at the June 21, 2010 Committee hearing, the Milwaukee Police Department was not objecting to renewal of Texture's license. On April 16, 2010, the Milwaukee Police Department responded with a report regarding the renewal of said license, which did not comply with ch. 90-11-c-1-a through c-1-g, MCO, in that it provided information far in excess to that which is required by ordinance which could form a basis of non-renewal or suspension. There were also claimed neighborhood objections to littering, loud music and noise, racing of vehicles and parking, congregation of unruly patrons, public urination, vandalism, disorderly conduct, and fights. However these objections did not follow the ordinance and could not justify the ordering of a hearing.

4. On June 10, 2010, the City Clerk's Office provided timely notice to the Licensee pursuant to Chapter 90 of the Milwaukee Code of Ordinances of the report of the Milwaukee Police Department and the neighborhood objections, and included therewith a copy of the Milwaukee Police Department report and Synopsis. The matter was scheduled for a hearing on the Milwaukee Police Department report and Synopsis and neighborhood objections on June 21, 2010, commencing at 4:00 p.m. in Room 301B of the third floor of City Hall. At said date, time and place, the Licensee appeared at the hearing and admitted receipt of the notice of hearing, together with a copy of the Milwaukee Police Department report and Synopsis. The Licensee was represented by Attorney David Halbrooks and by Maistelman & Associates, Attorney

Matthew D. Lerner, 5027 W. North Avenue, Milwaukee, Wisconsin 53208.

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

- A. The Committee accepted into the record a copy of the Milwaukee Police Department report and Synopsis which contained a list of 13 new incidents during the license year. The Synopsis also provided dispositions as to two prior incidents which resulted in municipal citations being dismissed and the two incidents were therefore struck from the Synopsis. The report and Synopsis were accepted despite objections from the Licensee that the report and Synopsis were quadruple hearsay and contained inaccuracies. Out of the reported incidents on the Synopsis, six of these police responses were self-initiated by the Licensee.
- B. Several individuals, only two of which who are residents of the 12<sup>th</sup> Aldermanic District, testified in opposition to renewal of the license. One objecting neighbor claimed to have been disturbed forty times by the Licensee, however this neighbor cannot see the establishment from her home. A second objecting neighbor testified to having seen several fights and some litter. A third witness, the owner of La Fuente, attempted to show an edited video to the Committee which was not accepted into the record. A fourth witness, the owner of Pedrano's testified as to litter he has found and the conduct of patrons, however he has no direct line of sight to Texture from his establishment. A fifth witness, an attorney for the owner of La Fuente, providing nothing more than inaccurate hearsay testimony which was proven 100% incorrect and stricken during the hearing. The sixth and seventh witnesses were residents of Whitefish Bay who had no firsthand knowledge but for an allegation of a flyer being placed on a windshield of their vehicle.
- C. Alderman Witkowiak testified that when he drove through the neighborhood in February 2010 he witnessed that the Bradley Tech Parking Lot was open and that patrons of Texture were parking there. An email regarding Alderman Witkowiak's observation was submitted to the Committee and accepted into the record. This was refuted by Salvo, who claimed that Texture had been requesting for a long time that the Bradley Tech Parking Lot be closed as it was the source of many problems and that Texture went so far as to barricade the lot to prevent issues.
- D. Donato Salvo, on behalf of the Licensee, testified that Texture had not distributed promotional materials outside of the establishment in several years and that the promotional materials which were claimed to have been litter had been properly disposed of in the trash by Texture. The testimony

of the individuals who indicated they found these materials is not credible.

- E. Salvo testified that the owner of La Fuente was illegally charging Texture customers for parking in his parking lots and once the lots were full, La Fuente's staff would leave the lots unattended thus causing problems. Salvo further stated that the Committee had advised him at the 2009 hearing to hire a licensed and insured security company and to call the police for any incident and that Texture listened to that advice.

Salvo explained that the disc jockey tones down the music one hour prior to closing and stops the music completely one half hour before closing and that upon closing patrons are cleared from the neighborhood within 10 minutes.

- F. Attorney Peter Donohue testified in favor of renewal of the Licensee. He stated that he is a tenant of the same building in which Texture is located and that Texture has been a good neighbor. He testified that he arrives at his office between 8:30 a.m. and 9:00 a.m. and that he does not find any litter or trash. He testified that the walls in the building are not insulated well for sound, but that Texture has honored Donohue's request of not making any noise until after 5:00 p.m.
- G. Texture's landlord, Mr. Chavez, testified that Texture has been an excellent tenant and that he supports renewal of the license.
- H. Tim Greene testified he that lives very close to one of the parking lots used by Texture's patrons and that there has been a decline in both noise and traffic. Greene supports renewal of the license.
- I. Scott Reynolds testified that he lives very close to the establishment and that he supports renewal of the license. Reynolds additionally stated that Texture has not distributed promotional materials outside of the club in several years as was explained by Salvo.
- J. An individual who resides across the street from Texture testified that he supports renewal of the license and that he has not seen any problems from the establishment. He stated that he has lived in the neighborhood for many years.
- K. An individual who takes photographs and video of the 5<sup>th</sup> Street and downtown areas testified that Texture does not cause any of the problems on 5<sup>th</sup> Street, rather that problems are caused by many of the other establishments, including La Fuente. This individual supported renewal of Texture's license.

- L. Brandon Williams, who is involved in the entertainment business, testified that Texture runs a good operation and supports renewal of its license.
- M. Darrell Hines II, who has a marketing firm which does business with Texture and who also attends the establishment with his wife, supports renewal of Texture's license. Hines testified that he and his wife feel very safe at the establishment.

Dated and signed at Milwaukee, Wisconsin this 30<sup>th</sup> day of June, 2010.

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JAMES A. BOHL, Jr., Chair  
Licenses Committee