

DEPARTMENT OF ADMINISTRATION
INTERGOVERNMENTAL RELATIONS DIVISION

STATE LEGISLATIVE REQUEST
2013-14 Legislative Session
Due August 3, 2012

Department/Division	City Attorney's Office
Contact Person (Name, phone, e-mail)	Adam B. Stephens, Assistant City Attorney Ext. 2669; asteph@milwaukee.gov
Legislative or Funding Proposal (include statutory references if applicable)	Legislative amendment to Wis. Stat. Sec. 125.12(2)(d) regarding alcohol beverage licensing appeals to circuit court.
Priority Level 1) Urgent 2) Need to have 3) Nice to have	URGENT.
What problem/issue will it address? Is State statutory change the only way to address the issue?	Significant additional litigation resources must be redirected to respond to a recently required form of circuit court hearing.
Background/History:	See attached summary.
Identify any internal or external support for the proposal.	Alderspersons, neighborhood and business improvement groups, police, and city clerk staff.
Identify possible sources of opposition to the proposal.	Tavern League, tavern and nightclub owners, private bar attorneys.
What other City Depts. will this proposal impact? Have you discussed this with them?	Common Council members, City Clerk and police have been advised and would be in support of this effort.
Will it reduce or increase City expenditures or revenues? (how much)	This request would save substantial litigation costs such as attorney, city clerk and police staff time, witness fees and appellate court costs.
Is this a state budget/funding request? Do you currently receive any funding for the program, if so how much?	N/A

This state legislative request seeks a legislative change to Wis.Stat. Sec. 125.12(2)(d) in response to a recently published court of appeals decision that is contrary to the city's alcohol beverage licensing authority and interest. Historically, alcohol beverage licensing decisions in Milwaukee County were reviewed by the circuit court by *certiorari* (i.e., a deferential standard that presumed that the decision was correct and could only be overturned if the city unlawfully exercised its discretion or denied an applicant due process). This standard was recently cited in one of my published appellate cases, *Questions Inc. v. City of Milwaukee*, 2011 WI App 126, and previously in supreme court and court of appeals decisions in *State ex rel. Smith v. City of Oak Creek*.

However, in *Newell v. City of Wausau*, 2012 WI App 100, the court of appeals held that judicial review of municipal alcohol beverage licensing decisions required a *de novo* hearing wherein the municipality's decision was not entitled to the presumption of correctness and a reviewing court could substitute its judgment as to the suspension, non-renewal or revocation of a alcohol beverage license in spite of a contrary finding by the municipality. Procedurally, this would require the city to (re)litigate each negative licensing decision by subpoenaing witnesses and offering evidence to the court. It is not clear what standards the court would use in making its decision because, up until now, these decisions were solely a matter of local concern left to the discretion of a city council. Further, a significant problem arises if witnesses are intimidated or worn down to "change their mind" between the council's action and the trial and refuse to cooperate with the city in proving the case to the court.

Wisconsin Stat. Sec. 125.12(2)(d) should be amended as follows (amendments in red):

(d) Judicial certiorari review. The action of any municipal governing body in granting or failing to grant, suspending or revoking any license, or the failure of any municipal governing body to revoke or suspend any license for good cause, may be reviewed by the circuit court for the county in which the application for the license was issued, upon application by any applicant, licensee or resident of the municipality. The procedure on review shall be by certiorari. The municipal governing body's action is entitled to the presumption of correctness and injunctive relief allowing a licensee to operate without a license shall not be ordered during the pendency of the judicial certiorari review. The person desiring review shall file pleadings, which shall be served on the municipal governing body in the manner provided in ch. 801 for service in civil actions and a copy of the pleadings shall be served on the applicant or licensee. An answer is not required. The municipal governing body, applicant or licensee shall have 20 days to file the municipal license record with the court for its certiorari review. The decision of the court shall be filed within 10 days after receipt of the municipal license record and a copy of the decision shall be transmitted to each of the parties. The decision shall be binding unless it is appealed to the court of appeals.

Deleted: the same as in civil actions instituted in the circuit court.

Deleted: an answer to the complaint. Following filing of the answer, the matter shall be deemed at issue and hearing may be had within 5 days, upon due notice served upon the opposing party. The hearing shall be before the court without a jury. Subpoenas for witnesses may be issued and their attendance compelled.

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