



IMPORTANT NOTICE: A \$25 FILING FEE MUST ACCOMPANY THIS APPEAL, WITHIN THE DEADLINE REFERENCED BY THE BILL.

Checks should be made payable to: City of Milwaukee and a copy of the bill should be included with your appeal

IMPORTANT NOTICE FOR CUSTOMERS PAYING BY CHECK

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account, or to process the payment as a check transaction.

IF THE CHARGES HAVE ALREADY APPEARED ON YOUR TAX BILL, THIS APPEAL CANNOT BE FILED

PLEASE READ CAREFULLY:

This Board may only determine if the City Department followed proper administrative procedures. It cannot hear appeals as to whether a Building Order is valid or not (those must be appealed to the Standards and Appeals Commission).

TO: Administrative Review Appeals Board
City Hall, Rm. 205
200 E. Wells St.
Milwaukee, WI 53202
(414) 286-2231

DATE: 3/25/2020

RE: 1619 S. 1st St.
(Address of property in question)

Under ch. 68, Wis. Stats., s. 320-11 of the Milwaukee Code of Ordinances, this is a written petition for appeal and hearing.

I am appealing the administrative procedure followed by Milwaukee Police Department
(Name of City Department)

Amount of the charges \$ _____

Charge relative to: appeal of nuisance determination (110)

I feel the City's procedure was improper due to the following reasons and I have attached any supporting evidence, including city employee's names/dates which I spoke to regarding this issue and copies of any city orders received:

See Attached

[Signature] Attorney-in-Fact
Signature
Kendrick B. Yandell
Name (please print)

162 N. 67th St Milwaukee 414.856.5358
Mailing address and zip code 53213 Daytime phone number

March 24, 2020

Administrative Review Appeals Board
City Hall, Rm. 205
200 E. Wells St.
Milwaukee, WI 53202
Email: lelmer@milwaukee.gov

Re: Appeal - Notice of Nuisance Premises
1619 S. 1st St., Milwaukee, WI 53204

To Whom It May Concern:

Please find attached letter appealing the Milwaukee Police Department's determination that the above-referenced property is a "nuisance" pursuant to MCO 80-10. I have mailed hard copies of "ARAB form 10/1/2018", a copy of this letter, our appeal, and a \$25.00 filing fee to the Administrative Appeals Board.

I must note that my office, De Los Santos Law Offices, LLC, filed an open records request for all relevant documents shortly after receiving the notice, but as of this date, had not received any responsive documents. Our office called MPD Open Records the week of March 16, 2020 but were informed that the request had still "not been processed." Since that time, our office has closed due to the Covid-19 pandemic, and I am handling this matter independently. This appeal is based on communications between myself and members of MRG Group LLC. Statements made in this appeal are subject to possible revisions, once we have received and reviewed all responsive documents.

If in-person appearances are required, I respectfully request 4-weeks notice if expert witness testimony is required, as our expert (William Anderson) has a busy work calendar.

Please contact me with any questions or concerns.

Sincerely,

/s/Kendrick B. Yandell
Counsel for MRG Group, LLC and Werk Investments, LLC
162 N. 67th St. Milwaukee, WI 53213
Email: ken@kby-law.com
Phone: 414.856.5358

March 24, 2020

Administrative Review Appeals Board
City Hall, Rm. 205
200 E. Wells St.
Milwaukee, WI 53202

Re: Appeal - Notice of Nuisance Premises
1619 S. 1st St., Milwaukee, WI 53204

Dear Board Members:

MRG Group, LLC, through its attorney, Kendrick B. Yandell, appeals the Milwaukee Police Department's determination that the above-referenced property is a nuisance, pursuant to MCO 80-10.5.a.

MRG contends the determination that the property is a nuisance is not supported by the facts or spirit of the law. MRG, and its commercial tenant Werk Investments, LLC, DBA PVB ("PVB"), have worked proactively with the Milwaukee Police Department to significantly minimize undesirable incidents, and taken aggressive and reasonable steps to ensure the safety of patrons, staff, community members, and police officers.

INCIDENT NOS. 2 THROUGH 4 ARE NOT "NUISANCE ACTIVITIES"

Nuisance Activity Nos. 2. and 4. of the "described nuisance activities" are not "nuisance activities" as a matter of law because they do not relate to people "associated with the premises." MCO 80-10.2.e. defines a "person associated with a premises" as an owner, operator, manager, resident, occupant, guest, visitor, patron or employee or agent of any of these persons."

Nuisance Activity No. 2 describes an "unknown subject" who shot into the property at 4:56 A.M. nearly three hours after PVB closed. This individual is not known by, or associated with, MRG or PVB and is not known to have ever visited PVB. Even if the unidentified person had at any prior time been "associated with the premises," the timing of his or her actions is too far attenuated from PVB's regular business operations. It is beyond the ability of any business or property owner to reasonably predict or control the acts of random people at 5:00 A.M.

Nuisance Activity No. 4 describes an "unknown subject" discharging a firearm into the premises. Again, there is no known connection between this "unknown subject" and the business

or building. Counsel for MRG has been informed that surveillance video showed an unknown person approaching the building from across the street by foot, standing briefly outside, and then shooting into the building before fleeing. This random act of aggression by an unknown individual cannot reasonably be attributed to the property or business owners' failure to control the use of their property.

MRG contends that No. 3 of the "described nuisance activities" does not constitute a Nuisance Activity for three reasons. First, numerous security guards on scene at the time of the alleged incident reported to management that no such fight occurred. After reviewing surveillance footage, MRG/PVB did not see any such activity. Second, counsel for MRG is unaware of any additional evidence supporting the allegation. The allegation does not identify a single witness or participant. Although the police are alleged to have been present as witnesses, the alleged fight did not rise to the level of probable cause to issue a citation, or even a warning. There were no calls for police assistance, no shoulder cam or squad video, and no reported injuries or complaints.

Finally, this incident does not rise to the level of a "nuisance activity" as a matter of law per MCO 80-10.2.c-1-k., *see* Wis. Stats. 940.01 to 940.32 (Crimes against Life and Bodily Security). There is a bona fide dispute as to whether anything actually occurred, or whether it may have simply been two or more people briefly roughhousing as they left the bar at bar time. With no witnesses, victims, video, citations, or injuries, this alleged Nuisance Activity does not rise to the level of any one of the crimes enumerated in MCO 80-10.2.c-1-k. Crimes against Bodily Security invariably require some evidence of an injury, and evidence of intent to cause injury. Roughhousing, without more, does not rise to the level of a crime against bodily security.

Arguably, such an incident might be deemed "disorderly conduct" per MCO 80-10.2.c-1-b. However, this is a lesser charge, and pursuant to MCO 80-10.3.a-1. (requiring "3 or more nuisance activities at a premises within 30-days), this incident does not qualify as a "nuisance incident" under MCO 80-10.2.c-1-k.

INCIDENT NOS. 1 AND 5 ARE EXTREMELY MITIGATED

There are two incidents which MRG acknowledges occurred, but MRG contends that there are mitigating circumstances requiring further evaluation. PVB made extensive operational and physical modifications in response to the April 7, 2019 event. The March 8, 2020 event, eleven months later, was completely unforeseeable, and not related to any deficiency in PVB or MRG's operations.

APRIL 7, 2019 INCIDENT

Nuisance Activity No. 1 was aggressively addressed by PVB's management on or about May 2019. The incident as described in the Notice of Nuisance Premises, states that two parties engaged in a verbal and physical altercation at the bar. The parties were allegedly separated, and after leaving the premises, one of the persons was attacked outside by the same subject.

MRG maintains that this is not entirely correct. MRG states that an altercation occurred inside the premises. During said altercation, one of the individuals struck the alleged victim, then ran out a side door onto the patio, jumped a low gate, and disappeared.

In response, MRG took the following corrective actions: (i) installed additional cameras inside and outside of the premises; (ii) installed a fence around the patio; (iii) enclosed the patio, to prevent people from climbing over the fence; (iv) closed the patio for business; (v) dead-bolted the door; (vi) hired additional armed security personnel; (vii) stationed guards at every door; and (viii) sealed the adjacent parking lot, requiring a photo ID for every car entering. Additionally, MRG hired William Anderson, a former US Marine officer, special forces operative, and security consultant, to conduct a security analysis of the premises. Mr. Anderson reported that PVB's security operations were professional, and that he could find no weaknesses in their security protocols. Mr. Anderson has stated that he would be willing to testify, if required, with adequate notice.

MARCH 8, 2020 INCIDENT

Regretfully, MRG is aware of the unfortunate March 8, 2020 incident described in Nuisance Activity No. 5. Again, MRG contends the incident is not properly described and fails to include important, mitigating facts.

First, MRG contends that it could not have reasonably foreseen the incident, nor acted to prevent it. Second, MRG was fully cooperative with the police, providing witness statements and sharing video surveillance. Third, the incident, as described, omits other important mitigating details.

The Incident Report states that "unknown actor(s) had discharged multiple firearms in the area as patrons exited the premises, striking the victim who was in the parking lot." "Twenty eight (28) spent casings were located 'around the premises.'" However, the report does not describe what actually occurred according to video surveillance, nor what "around the premises" means.

Surveillance video shared with the officers, and viewed by PVB/MRG's owner, shows two individuals (alleged assailants) in the bar watching a third person (alleged victim). No words were exchanged, and no fight took place. In fact, from observing the video, it does not appear that any conflict even existed. The alleged assailants left PVB, stationed themselves in the alley behind PVB, and waited for the alleged victim to exit PVB. It appears that the assailants fired approximately five rounds at the alleged victim before fleeing in their car. MRG does not believe that the other casings were on or about their premises, and it is not clear who the perpetrators were, or when and where the shots were fired.

Upon viewing the video, even the officers conceded that they were unable to observe any outward signs of conflict. If trained officers, and management, could not discern any sign of conflict after multiple reviews of the surveillance video, it is clear that nobody in PVB could have been aware of what was going to happen because there were no signs of conflict.

**A NUISANCE DETERMINATION IS INCONSISTENT WITH THE SPIRIT, IF
NOT THE LETTER, OF THE LAW**

MRG and PVB has not "chronically failed to control the use of their property. They have consistently and proactively taken all reasonable measures to ensure the safety of patrons, staff, community members, and police officers. The Common Council's preface to MCO 80-10 states in relevant part that "[t]he common council . . . finds that premises owners, and other parties conducting business activities upon the premises, that chronically fail to control the use of their property substantially interfere with the comfortable enjoyment of life, health and safety of the community.

MRG and PVB invested a significant amount of money into preventing future incidents after the April 9, 2019 incident, including physical improvements, additional surveillance cameras, sealing and monitoring unnecessary egresses, and hiring additional security, and an outside security consultant. It should be noted that there are no other reports of fights in the bar after the April 9th incident. Event Nos. 2 and 4 are not "Nuisance Incidents" as a matter of law. Incident No. 3 is unsubstantiated and did not rise to the level of probable cause for officers to even question anybody, much less issue citations, or even warnings.

Finally, the March 8th event was completely unforeseeable. With no outward signs of conflict or aggression, it is immensely unreasonable to expect that MRG or PVB could have foreseen and prevented this reckless and lawless action. MRG has consistently acted

professionally, reasonably and aggressively. While MRG has made every effort to monitor and prevent misbehavior, it is simply not possible for any entity to monitor and control the hearts and minds of random individuals, intent on aberrant behavior.

Hundreds of people come to PVB every weekend to socialize, network, and relax; thousands have come in the last year. The overwhelming majority of these people do not act up or cause problems. MRG and PVB have taken nearly every conceivable action possible to prevent the 4 or 5 people involved in the above-referenced incidents from their reckless behavior. They have worked with the police in every instance, providing copies of surveillance video, meeting with MPD, and making any and all improvements necessary to monitor and prevent unlawful behavior.

To declare MRG's premises a "nuisance," and to charge MRG with the costs of policing, flies in the face of the spirit of the law and ignores MRG's conscientious preventative measures. Furthermore, imposing the cost of future police responses will impose an undue financial burden on MRG despite its best efforts to be a good neighbor and community member. Finally, declaring the property a "nuisance" sends a negative message to similarly situated businesses, which may deem it in their best interest to avoid contacting police when needed, for fear of also being deemed "nuisances."

For all of the above reasons, MRG respectfully asks this Board to find that the premises located at 1619 S. 1st St. is not a nuisance. Counsel, members of MRG/PVB, as well as lay and expert witnesses are available, with sufficient notice, to answer the Board's questions, and provide testimony and additional documentation and video, in support of this appeal.

Sincerely,

/s/Kendrick B. Yandell
Attorney for MRG Group LLC and Werk Investments LLC
414.856.5358
ken@kby-law.com

Receipt of A.R.A.B. Appeal Fee

Date:	4/2/2020
Received Of:	Atty. Kendrick Yandell
Property at:	1619 S. 1 st St.
Received By:	LME
Check # (If Applicable):	2294 \$25.00