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Via Email Only ([jowcza@milwaukee.gov](mailto:jowcza@milwaukee.gov))

Office of the City Clerk

City Clerk James Owczarski

City Hall

200 East Wells Street, Room 205

Milwaukee, WI 53202



Rec'd 4/4/12  
JRO

Re: Amjad T. Tufail as agent for Shan Inc. dba Judy's Red Hots – 4812 West Lisbon Avenue Milwaukee, WI 53210 Objections

Dear City Clerk Owczarski,

Our office is Counsel to Shan Inc. dba Judy's Red Hots ("Judy"). On March 26, 2012, the Licenses Committee met to consider the renewal of the 24 hour license for Judy's and its agent, Amjad T. Tufail. The Committee voted to recommend that Judy's license be nonrenewal, based upon incidents recounted in the police report. There were no neighborhood objections, there were neighbors in support and the local Alderman did not object to the renewal. .

This letter serves as my client's written objection to the "Findings of Fact and Conclusions of Law" and recommendation of the Licenses Committee ("Committee"). The specific objections are as follows:

1. The Committee has failed to adopt Findings of Fact and Conclusions of Law as required by § 125.12(2)(b)(3), Wis. Stats., and § 90-11-2-c2, Milwaukee Code of Ordinances. The "Findings of Fact" states that "Based upon the sworn testimony heard and the evidence received at the hearing, the **Committee finds the following**" [emphasis added]. Judy's 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.
2. Due Process, as guaranteed under both the United States Constitution and Wisconsin Constitution, requires that the City of Milwaukee prove the allegations made in the police report prior to those allegations (specifically #10 and #11) being accepted as fact by the Committee.

The Findings of Fact and Conclusions of Law incorporate the entire police report. The police report, as read to the Committee on the day of the hearing, is quadruple hearsay and contains numerous inaccuracies. Despite the recitation of incidents in the synopsis and no one from MPD present at the hearing, MPD failed to prove anything about any of the incidents enumerated in the synopsis. In fact, MPD specifically did not object to the applicant's renewal. Yet the incidents identified in the synopsis have been incorporated into the Findings of Fact and Conclusions of Law.

3. Once the police synopsis was proven to be unreliable, the normal hearsay exception contained in


§ 908.03, Wis. Stats., does not apply. *See also Gehin v. Wisconsin Group Insurance Board*, 2005 WI 16. Additionally, City of Milwaukee Ordinance (“CMO”) 90-11-2-a-2-c and 2-d require that Judy’s be allowed to cross examine witnesses in opposition to renewal. The only way for the MPD to cure the hearsay issue once the synopsis is proven unreliable is to present testimony as to first-hand knowledge of the events. The failure of the Licenses Committee to prevent the police synopsis from being admitted and the lack of any cross-examination of police officers (they weren’t there) about the specific events contained in the synopsis results in the Licenses Committee having failed to act according to law.

4. Because the Findings of Fact and Conclusions of Law do not accurately reflect the Committee’s findings and the proof brought forward at the hearing, by presenting this report to the full Council as its Findings, the Committee is transmitting false or misleading information. Judy’s interest in the renewal of its license is a constitutionally protected property right. *Tavern League of Wisc. v. Madison*, 131 Wis.2d 477, 489 (Ct. App. 1986). An intentional manipulation of information which results in the deprivation of a constitutionally protected property right has been clearly established as a violation of substantive due process rights. *Hearn v. City of Gainesville*, 688 F.2d 1328 (11<sup>th</sup> Cir. 1983) (discussed by *Penterman v. WEPCO*, 211 Wis.2d 458, 472 (1997)).
5. In violation of Judy’s right to Due Process, the Committee placed the burden of proof on Judy’s to disprove that the incidents recounted in the police synopsis were true, or not related to Judy’s, yet the City was permitted to put its case for non-renewal to the Committee first. The allegations of the MPD were taken as fact without any evidence being put forth by the MPD to prove the content of its report as it relates to Judy’s.

In summary, Judy’s objects to the Findings of Fact and Conclusions of Law. In violation of § 125.12(2)(b)(3), Wis. Stats., and § 90-11-2-c2, Milwaukee Code of Ordinances, the Licenses Committee has never adopted the Findings of Fact and Conclusions of Law. The reasons relied upon for the non-renewal are unjust and not substantiated by any reliable evidence. In violation of Judy’s right to Due Process, the Licenses Committee accepted the police synopsis as fact without any credible substantiation by the MPD or City of Milwaukee, and did not allow Judy’s to cross-examine the actual MPD officers whom drafted the synopsis or had fist-hand knowledge of the incidents. The Committee also violated Judy’s substantive due process rights by providing inaccurate or misleading information to the Common Council in the Findings of Fact and Conclusions of Law. Finally, right to Equal Protection was violated as evidenced by the undue weight given to the unsubstantiated MPD synopsis as opposed to the neighbor in support, no formal MPD objection and local aldermanic support who had no objections based upon the licensee's installation of a camera system, staffing of an armed security guard, and willingness to make changes at the premises.

Thank you for your attention to this matter.

Sincerely,



Michael S. Maistelman  
Attorney at Law

Enc.

Cc: Amjad T. Tufail  
Common Council President Willie Hines Jr.(via email)