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Office of the City Clerk

Ronald D. Leonhardt
City Clerk

Carolyn Hill Robertson
Deputy City Clerk

July 24, 2003

Mr. Nihar J. Shah
2342 South Austin Street, Apt. 203
Milwaukee, WI 53207

Attorney David Bangert
5518 Parkview Drive
Mequon, WI 53092

Dear Mr. Shah and Attorney Bangert:

You are hereby notified that the Milwaukee Common Council will hold a hearing on July 31, 2003 commencing at 9:00 a.m., or as soon thereafter as this matter may be heard, in the Common Council Chambers on the third floor of City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202 to consider your renewal application for the Class "A" Liquor and Malt license for the premises located at 6329 South 20th Street, Milwaukee, Wisconsin ("VIP Food & Liquor Mart").

Attached you will find a copy of the Report of the Utilities and Licenses Committee which includes their Findings of Fact, Conclusions of Law and Recommendation, recommending renewal with a forty-five (45) day suspension of the Class "A" Liquor and Malt license for the premises located at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart"). The recommendation is the result of a public hearing before the Committee held on July 22, 2003, and a police report that could form the basis of a non-renewal or suspension.

You may file a written objection to the Report of the Utilities and Licenses Committee and shall have the opportunity to present arguments in writing supporting that objection to the Common Council. Any written objections to the Committee's Report must be filed with the City Clerk at least two (2) days prior to the above-mentioned date set for hearing by the Common Council. You or a legal representative may also appear at the Common Council meeting and request an opportunity to address the Common Council for approximately five (5) minutes to present an oral argument on your own behalf.

Respectfully,

RONALD D. LEONHARDT
City Clerk
Enclosure



JAMES A. BOHL JR.
Alderman, 5th District

July 24, 2003

To the Honorable, the Common Council

Dear Members:

Re: Common Council File 021406

Recommendation of renewal with a 45-day suspension based upon a danger to the health, safety and welfare of the citizens of Milwaukee of the Class "A" Liquor & Malt renewal application of Nihar Shah for the premises at 6329 S. 20th St. ("VIP Food & Liquor Mart") in the 13th Aldermanic District.
(Committee vote: Ayes: 4, Noes: 0)

With regard to the item listed above, the Utilities and Licenses Committee held an evidentiary hearing on July 22, 2003.

Pursuant to section 90-11 Milwaukee Code of Ordinances, and section 125.12(12), Wis. Stats., the Committee is transmitting a copy of its Report and Recommendations, regarding the above matters to your Honorable Body.

Pursuant to City Ordinances, prior to the time the Common Council acts on the Committee's Report, a **roll call vote will be taken** to confirm that all members present and voting have read the Committee's Report and any objections that have been filed by the Licensee.

These matters have been scheduled for a hearing before the full Common Council at its meeting on Thursday, **July 31st, 2003** at 9:00 A.M. in the Common Council Chambers.

Respectfully,

A handwritten signature in black ink that reads "James A. Bohl Jr." in a cursive style.

James A. Bohl, Jr., Chair
Utilities & Licenses Committee

cc: City Attorney's Office
Common Council/City Clerk - License Division
Milwaukee Police Department- License Investigation Unit
All Council Members
File No. 021406



JAMES A. BOHL JR.
Alderman, 5th District

Date: July 24, 2003

To: All Members of the Milwaukee Common Council

From: Utilities and Licenses Committee

Re: Report on the Renewal Application of Nihar J. Shah, holder of the Class "A" Liquor and Malt license for "VIP Food & Liquor Mart" for the premises located at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart").

FINDINGS OF FACT

1. Nihar J. Shah (hereinafter "the Licensee") is the holder of a Class "A" Liquor and Malt License for the premises located at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin. Said license expired at midnight on July 15, 2003. Consequently, this premises is at the time of hearing, without a Class "A" Liquor and Malt license.
2. An untimely application to renew said license was filed with the Office of the City Clerk on June 18, 2003.
3. Pursuant to Chapter 90 of the Milwaukee Code of Ordinances and Chapter 125 of the Wisconsin Statutes, the matter was referred to the Milwaukee Police Department for investigation. On June 19, 2003, the Milwaukee Police Department responded with a report, which could form the basis for non-renewal or suspension of said license.
4. On July 14, 2003 the City Clerk's Office provided timely notice to the Licensee pursuant to Chapter 90 of the Milwaukee Code of Ordinances and Chapter 125 of the Wisconsin Statutes and included therewith a copy of the Milwaukee Police Department report. The matter was scheduled for a hearing on the police report on July 22, 2003, commencing at 10:00 a.m. in Room 301B of the third floor of City

Hall. At said time and place, the licensee appeared and was represented by Attorney David Bangert, 5518 West Parkview Drive, Mequon, WI 53092.

5. Based upon the sworn testimony heard and the evidence received at the hearing, the Committee finds the following:
- A. On May 4, 2001 an underage Milwaukee police aide entered the licensed premises at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart") and was able to purchase alcoholic beverages without being asked for identification from the licensee Nihar J. Shah. Mr. Shah was cited for sale to an underage person. On August 20, 2001 he was found guilty in Milwaukee Municipal Court and fined \$146.00
 - B. On January 12, 2002 at 5:00 PM an underage police aide, under the direction of police officers attempted to purchase a container of "Mike's Hard Lemonade", an alcoholic beverage, from the licensed premises at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart"). After first being refused by one clerk, a second clerk sold the item to the police aide. During the investigation officers observed displays of pornographic materials and box containing pornographic video tapes. These were in plain view of minors. The licensee was cited for displaying material harmful to a minor and sale to an underage. The citation with respect to sale to any underage was dismissed in Milwaukee Municipal Court. However, the citation for displaying material harmful to a minor resulted in a guilty finding on May 21, 2002. The licensee was fined \$149.00
 - C. On June 23, 2002, officers of the Milwaukee Police Department were dispatched to a complaint of "trouble with a subject" at the licensed premises at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart"). Upon arrival they spoke to a woman who stated that the owner, Nihar Shah, refused to pay her for phone cards that he had sold in his store, and give her the unsold phone cards. Mr. Shah was insisting that the woman leave his premises. The complainant, however, needed to talk to police regarding her complaints. Mr. Shah became very uncooperative and yelled at police. He yelled at the police because they did not allow the customer to leave until they were finished with the investigation.

The officers noticed that Shah's Class "A" Liquor and Malt license expired June 18, 2002, and his cigarette license expired also on June 18, 2002. The customer told officers that when she arrived at the store the store was open

for business and he was selling beer, alcohol and cigarettes. Mr. Shah was not cited because these violations were not observed by the officers.

The malt beverage, beer and cigarettes were not enclosed and the store had been open for business. As the officers arrived it was observed that Mr. Shah was placing a sign on the door stating "closed from Tuesday 6-18-02, until Tuesday 6-24-02." He was instructed he could not open his store until his licenses were renewed or the alcohol, malt beverages and cigarettes were removed from the shelves or in a locked area. An incident report was filed.

D. On August 31, 2002, 5:50 PM, officers of the Milwaukee Police Department conducted an investigation of the sale of alcoholic beverages to underage person at the license premises located at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart"), due to numerous complains from citizens in the area of sales of alcoholic beverages to underage persons. At approximately 7:20 PM, from a position of concealment, and using binoculars, police observed one George Burks standing in front of the premises. He entered the premises as two young occupants of a vehicle stopped at the store and enter as well. A short while later all three exited the store, one was carrying a large liquor box from the store. After leaving, the two young occupants in the vehicle were stopped by officers. The officers' subsequent investigation revealed that neither boy was of legal drinking age. With a consent search of the trunk of the motor vehicle, the officers found a box in the trunk which contained a 1.75 liter bottle of Fleischmann's Vodka, and a 750 milliliter bottle of Fleischmann's Vodka. One of the two persons in the auto told the officers that Mr. Burks met them in the back of the store next to the coolers. Mr. Burks placed the two bottles in the box, and was given a \$20.00 bill for which no change was given for the transaction. One of the boys told officers that Mr. Burks carried the box out of the store and placed into the trunk of the boys' auto. Mr. Shah was on the premises, and was the cashier. He was told of the transaction by officers. He was told that the boys exited the premises with a liquor box that they did not have when they entered. He denied that it occurred because he said he ID's everyone. Mr. Shah stated that Burks is a paid part-time paid employee. The licensee was cited for sale to underage persons (2 counts). However, the charge was not issued by the City Attorney's Office and was dismissed on October 24, 2002.

E. On August 31, 2002, the same officers reported above in item "5.D," were, at 8:45 PM, in a position of concealment, using binoculars. The officers observed George Burks standing in front of the store. He entered the store just before two young females in a vehicle pulled in front of the store and entered the premises. A short while later they were observed leaving the store carrying bags. Subsequently, the girls were stopped by

another officer. That officer found the girls to be under 21 years old. The bags in the back seat contained a 6-pack of Miller Lite and a 4-pack of Jack Daniels Country cocktails. One of the girls told the officers she purchased the items from the clerk whom she identified as Nihar Shah. Mr. Shah asked to see some identification, and was given a driver's license, with a date of birth showing that the person was under 21 years of age and the words written in red appearing on the license "Under 21 until 8-5-05." Officers viewed the videotape from the store and observed the customer show Shah an ID. Shah briefly looked at it and gave it back, after which she placed the ID back in her wallet. The videotape also shows the second underage customer placed the Jack Daniels Country cocktail on the counter. She was never asked to provide any identification. The officers were able to hear the first girl tell the second, to take her drinks. Nihar J. Shah was cited for sale to underage person (2 counts). That citation was not issued by the City Attorney's Office on October 24, 2002.

- F. On September 12, 2002, officers were dispatched to District 6, regarding a complaint of an underage alcohol event that may have occurred at South 13th Street and West Edgerton Avenue in the City and County of Milwaukee, Wisconsin. The officers interviewed a citizen who informed them that he had returned home from work and found his 17-year old son would not answer the door to his home. He entered his son's room, and found his son on the bed intoxicated. He was conveyed to St. Francis Hospital, treated and released. The son's blood alcohol content was approximately .177. The boy was later interviewed by officers. He said he did not go to school on September 11, 2002, but instead took the bus to the licensed premises at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart") and bought a bottle of Sky Vodka and a 12-pack of Heineken beer. He went home and drank the items alone.

The boy gave officers a description of the person he claims sold him the liquor and beer. The officers went to the licensed premises at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart") and interviewed the owner, Nihar Shah, who stated that on September 11, 2002 he was the only one working the register before 1:00 PM, and did not recall selling anything to the underage person. Mr. Shah did not match the description that the boy gave to the officer. Neither did the other employee working on September 11, 2002 as of 12:00 noon. An incident report was filed.

- G. On September 14, 2002 at about 9:45 AM, an officer did a premises check at the licensed premises at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart"). The only employee on the premises told the officer that he did not have a

bartender's license. He stated that the licensee, Nihar Shah, left him to run the store while Shah went to Sam's Club. He told officers that Shah knew he did not have a bartender's license. Shah was called to the store and he told officers he knew the clerk did not have a Class "D" bartender's license. He stated that he needed to run to the bank to get change. The licensee was cited for no responsible person upon a licensed premises (licensee responsibility). He was found guilty on February 14, 2002 and fined \$150.00. At the hearing Mr. Shah claimed that the only individuals he now employs are individuals with Class "D" Bartender's licenses.

- H. On April 4, 2003 at 1:35 PM, officers of the Milwaukee Police Department, along with two underage police aides, conducted a licensed premises check at the licensed premises at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin ("VIP Food & Liquor Mart"). The first police aide was sent into the store. That aide was able to pick up a 6-pack of Smirnoff Ice, valued at \$8.54. The police aide walked to the checkout counter and paid for the alcoholic beverages and walked out of the store. A second police aide was sent into the store where he picked up a 12-pack of 12-ounces bottles of Corona beer and walked up to the checkout counter and paid for the alcoholic beverage with his Wisconsin Driver's license which listed him as being under 21 years of age. He then left the store. The store clerk was identified as Mohinder P. Singh, d/o/b January 1, 1946. Singh told the officers that he thought both of the police aides were of age to buy the items when he sold them. The owner, Mr. Shah, was contacted and told to come to the store. While waiting for the owner, the officers checked the milk cooler found a half gallon of milk with an expiration of April 2, 2003, and a pint of milk that expired on April 3, 2003. There was also a container of butter that expired on January 20, 2003, and a can of Reddi Whip, which expired on August 23, 2002. The officers walked around the store and observed several items, including chips, medicine, soda, and various other items that had expiration dates well over one to two years old. The Health Department was contacted and sent an agent to the store. The agent informed the officers that it was not illegal to sell medicine and food past expiration dates, but that it was illegal to sell expired milk and dairy products past the expiration dates. Further investigation was pending. Nihar Shah was cited for sale to underage persons prohibited (licensee responsibility - 2 counts) and outdated dairy products. The cases have been adjourned to August 25, 2003. Mohinder Singh was cited for sale to an underage person prohibited and those trials were adjourned to August 25, 2003.

CONCLUSIONS OF LAW

1. The Committee has jurisdiction to hold hearings and provide Findings of Fact, Conclusions of Law and a Recommendation to the full Common Council pursuant

to Chapter 125 of the Wisconsin Statutes and Chapter 90 of the Milwaukee Code of Ordinances.

2. This location poses a danger to the health, safety and welfare of the citizens of the community. That is shown by the selling of out-of-date food products, the incident of illness of a juvenile by the operation of this store, operating this store without a licensed bartender, allowing adult videos to be visible to minors, and for two years running, not timely renewing his Class "A" Liquor and Malt license.

The Committee further understands despite the appalling record regarding underage sales of alcohol, that it cannot, and the council cannot, consider those matters because of the operation of § 125.12(1)(a)2., Wis. Stats..

3. In order to protect the health, safety and welfare of the citizens of the City of Milwaukee, it is the recommendation of the Utilities and Licenses Committee that the full Common Council of the City of Milwaukee exercise its judgment to renew the Class "A" Liquor and Malt license of Nihar J. Shah for the premises at 6329 South 20th Street in the City and County of Milwaukee, Wisconsin with a forty-five (45) day suspension.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated above, the Committee, by a vote of four (4) ayes and zero (0) noes, recommends that the Class "A" Liquor and Malt License held by Nihar J. Shah for the premises located at 6329 South 20th Street ("VIP Food & Liquor Mart") in the City and County of Milwaukee, Wisconsin be renewed with a forty-five day suspension.

Said suspension is to be in effect between midnight, July 31, 2003 through midnight, September 13, 2003.

Dated and signed at Milwaukee, Wisconsin this 24th day of July, 2003.



JAMES A. BOHL, Jr., Chair
Utilities and Licenses Committee