



Office of the City Clerk
Council Services Division

Ronald D. Leonhardt
City Clerk

Anthony J. Zielinski
Manager

April 3, 2003

Merry Jane K. Kusz, Agent
4931 South 68th Street
Greenfield, WI 53220

Dear Ms. Kusz:

You are hereby notified that the Milwaukee Common Council will hold a hearing on April 15, 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 Class "B" Tavern License as agent for "Merry's, Inc." for the premise located at 5100 West Howard Avenue, Milwaukee, Wisconsin ("Merry's").

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 of the Class "B" Tavern license after undergoing a ten (10) day suspension. The recommendation is the result of a public hearing before the Committee held on April 1, 2003 along with a police report.

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
65136

FREDRICK G. GORDON

ALDERMAN, 7TH DISTRICT



CITY HALL
MILWAUKEE, WISCONSIN

CHAIRMAN:
FINANCE & PERSONNEL COMMITTEE

VICE CHAIRMAN:
STEERING & RULES COMMITTEE

MEMBER:
JUDICIARY & LEGISLATION COMMITTEE
WISCONSIN CENTER DISTRICT BOARD
REDEVELOPMENT AUTHORITY
PRIVATE INDUSTRY COUNCIL
LIBRARY BOARD

April 3, 2003

To the Honorable, the Common Council

Dear Members:

Re: Common Council File 021396

Recommendation of renewal with a 10-day suspension based on police report of the Class "B" Tavern renewal application of Merry Jane K. Kusz for the premises at 5100 W. Howard Ave. ("Merry's") in the 11th Aldermanic District. (committee vote of 3 ayes, 0 noes and one excused)

With regard to the items listed above, the Utilities and Licenses Committee held an evidentiary hearing on April 1, 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 Tuesday, **April 15th, 2003** at 9:00 A.M. in the Common Council Chambers.

Respectfully,

Fredrick G. Gordon, Acting 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. 021396



FREDRICK G. GORDON
ALDERMAN, 7TH DISTRICT



CITY HALL
MILWAUKEE, WISCONSIN

CHAIRMAN:
FINANCE & PERSONNEL COMMITTEE

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MEMBER:
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WISCONSIN CENTER DISTRICT BOARD
REDEVELOPMENT AUTHORITY
PRIVATE INDUSTRY COUNCIL
LIBRARY BOARD

Date: April 3, 2003

To: All Members of the Milwaukee Common Council

From: The Utilities and Licenses Committee

Re: Report of the Renewal Application of the Merry Jane K. Kusz, as agent for "Merry J's, Inc." for a Class "B" Tavern license for the premises located at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's").

FINDINGS OF FACT

1. Merry Jane K. Kusz (hereinafter the "Licensee") is the agent for "Merry J's, Inc" doing business at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's "). Said license expires at midnight, May 7, 2003.
2. An application to renew said license was filed with the Office of the City Clerk on March 3, 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. There was a Milwaukee Police Department report dated March 4, 2003, which could form the basis for non-renewal or suspension of the license.
4. On March 24, 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 of the police report that could form the basis for suspension or non-renewal of the licenses of the Licensee. The matter was scheduled for a hearing on the neighborhood objections on April 1, 2003 at 10:15 a.m. in Room 301B of the third floor of City Hall. At said date, time and place, Mary Jane K. Kusz appeared at the hearing and was not represented by counsel.



5. Based upon the sworn testimony heard and the evidence received at the hearing, the Committee finds the following:
- A. A corporate officer, David L. Kusz was charged with endangering safety by use of a dangerous weapon and was found guilty on July 9, 1992. He was sentenced to 18 months of probation and 75 days in the House of Correction, which was stayed.
 - B. On February 28, 1999, at 1:48 a.m., officers of the Milwaukee Police Department responded to the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") on a report of a shooting. Upon their arrival, the officers found a victim who had been shot in the left wrist. The investigation revealed that earlier in the evening the licensee, Merry Kusz, had carded a subject inside the tavern. The subject was upset by this and was told to leave the tavern by David L. Kusz, the husband of Merry Kusz. Approximately 15 minutes later an unknown subject fired several shots into the tavern. Twelve officers were required for approximately two hours to investigate the matter and a criminal complaint was filed.
 - C. On Wednesday, May 12, 1999, at 10:37 p.m. officers of the Milwaukee Police Department were sent to the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") to investigate a noise nuisance. Upon their arrival, the officers heard loud music coming from within the licensed premises. Music could be heard in the parking lot and on the city street while the doors to the tavern were closed. Upon entering the tavern, the officers found an unlicensed bartender behind the bar. The agent was not on the scene. Citations were issued to the agent at the time, Linda L. Yanasak, and to the bartender Michael Fennig. However, all of the citations were dismissed without prejudice on August 9, 1999.
 - D. On Saturday, June 19, 1999, officers of the Milwaukee Police Department were dispatched to the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") on a report of a fight. Upon their arrival the officers arrested one person for battery. The agent was on the scene.
 - E. On Sunday, October 24, 1999 at 10:02 p.m., officers of the Milwaukee Police Department were dispatched to the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") to investigate a battery. Upon their arrival, officers found that one Robert Lewandowski and his brother got into a fight inside the tavern. Neither subject wished to prosecute, and the agent was not on the scene.

- F. On Monday, February 21, 2000 at 8:10 p.m., officers of the Milwaukee Police Department conducted a tavern check at the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") and recovered two video gambling machines. The machines contained \$120. Both the money and the machines were seized and Mary Jane Kusz was arrested. Originally the licensee was charged with a gambling place, which was dismissed on January 26, 2001 and the citation was reissued as a charge of permitted gambling, which was held open for two years to March 4, 2002 to be dismissed if there were no further gambling charges.
- G. On January 18, 2001 at 2:02 a.m., officers of the Milwaukee Police Department observed approximately eight people in the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's"). Officers entered the bar and observed one patron drinking at the bar. The officers spoke to the licensee, Merry Jane Kusz, who became belligerent and stormed out of the bar after she was told she would be receiving a citation. The licensee was cited for patrons after hours and on June 19, 2001 was found guilty and fined \$150.
- H. On June 6, 2002 at 1:42 a.m. officers of the Milwaukee Police Department were dispatched to the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") to investigate a battery complaint occurring outside the tavern. The bartender, Sherri Sable, stated that two patrons got into an argument and went outside followed by another patron. Ms. Sable stated that she heard a fight outside and that someone had called the police. Ms. Sable also stated that the owner was out of town and could not be reached. Citations were issued to the bartender for two charges of permitting underage on a Class "B" premises, but the charges were dismissed without prejudice. Two of the persons fighting were underage and were also issued citations for assault and battery and presence of underage on a Class "B" premises. Those charges were also dismissed without prejudice.
- I. On July 1, 2001 officers of the Milwaukee Police Department were sent to a fight in a parking lot at 51st and Howard in the City and County of Milwaukee, Wisconsin ("Merry's"). Witnesses stated that James Barringer was the bartender on duty in the tavern. A fight broke out inside and continued outside. The bartender left the tavern after the fight continued outside. A witness called police.
- J. On August 26, 2001 at 12:27 a.m., officers of the Milwaukee Police Department were dispatched to a battery complaint at the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's"). A victim stated that while she was standing at the bar a suspect hit her in the face with a beer mug. She

complained of pain and swelling to her lip and also had two ¼ inch lacerations to her lower lip. The officer learned that there was a videotape system in the bar. The next day the officer attempted to get a copy of the tape and was told by the owner that she did not have it on the premises, but the officer could pick it up in a couple days. On September 8, 2001, the officer made contact with the licensee, Mary Kusz, in reference to the videotape. She stated that she was unable to call the officer back due to being away. She stated that she reviewed the tape and was unable to make anything out. She also stated that the tape had been taped over.

- K. On January 12, 2002 plain clothes officers conducted a licensed premises check of various liquor stores and tavern in the area. At 10:35 p.m. on January 12, 2002, a 19 year old police aide entered the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") and was able to purchase a tap beer from the bartender James Barringer. The police aide was able to enter the tavern without having his I.D. checked by the doorman, Michael Rewolinski. Citations given to the licensee Merry Jane K. Kusz for presence of underage and sale to underage were dismissed on July 8, 2002. As to the bartender, James Barringer, citations were issued for sale to underage and presence of underage were adjudicated on July 8, 2002 and James Barringer was found guilty as to both charges and fined a total of \$399.00. Both cases as to James Barringer are open commitments. At the hearing in this matter, the licensee advised the committee that Mr. Barringer no longer works for the tavern.

The doorman, Michael Rewolinski, was cited for presence of minor, which was dismissed on March 7, 2002.

- L. On February 1, 2002, officers of the Milwaukee Police Department were dispatched to the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") regarding a jukebox being placed in front of a rear exit door so underage people could not come through that door. The bartender, James Barringer, was advised that this was a violation and that the jukebox was not to be in front of the door. Mr. Barringer was cooperative and the jukebox was removed and no citation was issued.
- M. On April 26, 2002 at 10:20 p.m. officers of the Milwaukee Police Department entered the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") with a 20-year old police aide. The aide was checked by the bouncer who asked for an I.D. The aide was told to leave because he was not of age. The officers exited the tavern but later reentered because an officer observed some subjects inside the tavern who appeared to be young. They found one 1 20-year old female who appeared to be highly intoxicated. They also

found a 20-year old male who appeared to be slightly intoxicated. James Barringer was the bartender on duty at the premises. The officers overheard comments such as "you guys have no business here there's no trouble," and "Don't you have anything better to do?," and "get out, the only problems here are you guys." Several subjects were observed to be highly intoxicated while consuming alcoholic beverages. Due to the loud and boisterous nature of the patrons, all patrons were asked to leave and a back-up squad was called. Officers found a video game machine, two dart board games, and a jukebox without valid permits. When the licensee Merry Jane K. Kusz was contacted by phone, she was argumentative and uncooperative.

The licensee, Merry Jane K. Kusz was cited for presence of underage licensee responsibility and found guilty on September 16, 2002 and fined \$470. The licensee was also cited for permit required video game, dart board, and jukebox. As to the permit required on the games, the licensee was found guilty on September 23, 2002 and received a suspended sentence on two charges and fined \$210 on each of two others.

Also on September 23, 2002 James Barringer was found guilty and one citation was issued to him for sale to underage and he was fined \$150.

- N. On February 15, 2003 at 2:28 a.m. officers of the Milwaukee Police Department were dispatched to the licensed premises at 5100 West Howard Avenue in the City and County of Milwaukee, Wisconsin ("Merry's") for a battery complaint. A female patron was found on the floor of the tavern conscious and complaining of pain to her face. She stated that she was intentionally punched in the face by another female patron because the other female patron thought that her boyfriend was blowing kisses to her. A witness stated that she observed the female punch the other female and that moments after that happened it appeared that some friends of the suspect started to fight with the first female's boyfriend. The bartender on duty, David Mason, stated he was at the other end of the bar and did not observe anything. A battery complaint was filed.

CONCLUSIONS OF LAW

1. The Committee has jurisdiction to hold hearings and provided Findings of Fact and 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. Based upon the above facts found, the Committee concludes that the licensee, Merry Jane K. Kusz, as agent for "Merry's Inc." at 5100 West Howard Avenue has not met the criteria of Chapter 90 of the Milwaukee Code of Ordinances to

allow renewal of his Class "B" Tavern license without undergoing a ten (10) day suspension. The Committee finds the police report to be true.

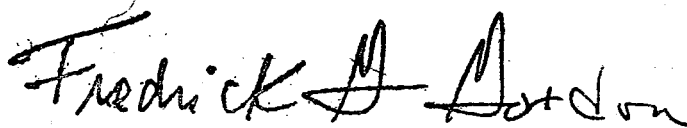
3. In order to protect the health, safety and welfare of the citizens of the City of Milwaukee, it is the recommendation of the Utilities and Licenses Committee that the full Common Council of the City of Milwaukee should exercise its judgment to renew the Class "B" Tavern license of Merry Jane K. Kusz, as agent for "Merry's, Inc." for this premises with a ten (10) day suspension.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated above, the Committee, by a vote of three (3) ayes, zero (0) noes and one (1) excused recommends that the Class "B" Tavern license held by Merry Jane K. Kusz as agent for "Merry's, Inc." be renewed with a ten (10) day suspension.

Said suspension is to be in effect from midnight, May 7, 2003 through midnight, May 16, 2003.

Dated and signed at Milwaukee, Wisconsin this 3rd day of April, 2003.



FREDERICK G. GORDON
Acting Chairman,
Utilities and Licenses Committee