

## **COMMITTEE ASSIGNMENTS**

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- Licenses Committee

### **VICE CHAIR**

- Zoning, Neighborhoods and Development



**MILELE A. COGGS**  
ALDERWOMAN, 6TH DISTRICT

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- Finance and Personnel Committee
- Library Board
- Neighborhood Improvement Development Corporation Board
- Special Joint Committee on the Redevelopment of Abandoned and Foreclosed Homes
- Steering and Rules Committee
- Wisconsin Center District Board

June 17, 2022

To the Honorable, the Common Council

Dear Members:

Re: Common Council File Number 220120

Attached are written objections to file number 211120, Motion relating to the recommendations of the Licenses Committee relative to licenses, relating to a recommendation of:

Nonrenewal based on the police report and applicant and staff testimony of the Food Dealer License for Adam J. Velarde for the premises located at 5120 W Capitol Dr. ("Burger King #3456") in the 2<sup>nd</sup> aldermanic district

These matters will be heard by the full Council at its Tuesday, June 21, 2022 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached statement and materials.

Respectfully,

Milele Coggs, Chair  
Licenses Committee

cc: All Council Members  
City Attorney's Office  
Common Council/City Clerk – License Division  
CCF 220120



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June 15, 2022

**VIA E-MAIL**

**jowcza@milwaukee.gov**

Mr. James R. Owczarski  
City Clerk  
City of Milwaukee  
City Hall – Room 205  
200 East Wells Street  
Milwaukee, WI 53202

**RE: *Cave Enterprises Operations, LLC – Application for Food Dealer Renewal License for Burger King #3456 at 5120 W. Capitol Drive in the 2nd District***

**SUBJ: Common Council File No. 220120: Written Response to the Report of the Committee**

Dear Mr. Owczarski:

We represent Cave Enterprises Operations, LLC in connection with the above-referenced matter, an application for renewal of the Food Dealer License for Burger King #3456 at 5120 W. Capitol Drive. By copy of your June 10, 2022 letter, we received the Report of the Licenses Committee and Findings of Fact, Conclusions of Law and Recommendation. We understand that the committee recommended non-renewal of the license. Pursuant to § 85-5-2, Milwaukee Code of Ordinances (“MCO”), the licensee objects to the Report of the Licenses Committee and the recommendation of non-renewal.

We request that this written response be considered by the Common Council at its June 21, 2022 meeting. The undersigned will attend to present this response and answer questions.

**KEY FACTS INCLUDING THOSE OMITTED FROM THE REPORT**

The recommendation of non-renewal stems from the tragic events of January 2, 2022, and the Licenses Committee’s view of the responsiveness and cooperation of Cave Enterprises, the owner of this Burger King restaurant. There is no question that the shooting was a tragedy for our deceased employee and her family, the community, and the rest of our employees and their

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loved ones. Likewise, there is no question that Cave Enterprises has the responsibility as a licensee to screen, hire and train employees, foster an inclusive and secure workplace, and serve its customers in a clean and safe restaurant with quality food.

Here, Cave Enterprises met the licensing standards through its policies, training, and overall cooperation with the Milwaukee Police Department's investigation.

1. ***Cave Enterprises has a company policy which provides that we do not hire felons to work at our restaurants.*** When completing the job application to work at our restaurants, prospective employees must certify that they are not felons. The individual who fired his gun did not complete his job application truthfully as we now know that he had a previous conviction for a felony crime. We would not have hired him had he properly disclosed his criminal history.

While we reasonably believed our policy was sufficient for screening employees, we have taken additional steps to further confirm the representations made in the job application and we will continue to review our employment policies and procedures.

2. ***Cave Enterprises has a company policy prohibiting all firearms in the restaurant or on the property.*** During their training, the new employees are notified of our policy prohibiting firearms at the restaurant; all employees are required to acknowledge that they read, understand, and will comply with this policy. When attending the new employee orientation at the restaurant, we again notify the employees of the policy prohibiting firearms and at that time they also have to acknowledge and accept the policy in their discussion with the hiring manager. By completing the employment application, training, and attending the new employee orientation, employees are required to confirm at least two times that they will not bring firearms into the restaurant.

The individual who fired his gun violated our policies when he brought that gun to the restaurant; that is cause for termination which is what we did in his case. Similarly, the employee who was involved with the handling of the gun after the shooting was terminated.

While we reasonably believed our policy and the remedial actions taken were sufficient, we will revise our policy, review the confirmation procedures, and implement additional best practices in this regard. We will engage with the Milwaukee Police Department as part of this process.

3. ***We cooperated with the Milwaukee Police Department's investigation.*** Cave Enterprises cooperated with the Milwaukee Police Department in its investigation of the criminal events on January 2<sup>nd</sup>. From the beginning of the investigation, Cave Enterprises identified formal points of contact. District Manager James Kirk arrived on site shortly after the incident the night of January 2<sup>nd</sup>. Mr. Kirk stayed on site and worked with the

Police Department detectives until 10am the following morning. Mr. Kirk answered questions and arranged access to the restaurant and with personnel for anything they needed. Mr. Kirk thereafter identified Adam Velarde (License Agent) and Jacob Cox as additional points of contact.

Mr. Velarde made himself known to the Department, offered his assistance wherever possible, and promptly responded when contacted. Our IT staff downloaded all available security camera video angles and provided the recordings to the Police Department on January 4, 2022; we provided information to the Department regarding the contents of the videos, the perspective of certain camera angles, and key timestamps. Within one (1) hour of receiving the Department's request for our employee policies and procedures, Mr. Velarde responded and then emailed the same to Officer Buchner on January 16, 2022.

4. ***We closed the restaurant for 21 days.*** We immediately decided to keep the restaurant closed out of respect for our deceased employee and her family. We quickly realized that the tragedy also affected the overall community and our other employees who were not involved in the criminal actions when a somber vigil was held in the restaurant parking lot following the January 2<sup>nd</sup> incident. All 20 employees of this restaurant are residents of the City of Milwaukee so we wanted to give sufficient time to grieve the loss of their coworker and community member. The health and safety of our employees has always been a strong focus in our restaurant operations. We are fortunate that almost all of our employees have returned to work.
5. ***Support by Cave Enterprises for Employees and Community.*** Despite the tragic events and what we now know about the employees who were involved in the criminal incident, our team of employees at Burger King #3456 is strong, unified, courteous, respectful, and hard working. We have and will continue to do everything that we can to put the right leaders in place in the restaurant, appropriately train them, and offer them the employment that they rely on. Most recently, we placed Victoria Smart, who has over 9 years experience with Burger King, as the General Manager. In addition to following all of the policies and procedures, and implementing our updates, Victoria has also implemented her own informal practices with hiring young people to work at the restaurants, including meeting their parents prior to starting employment. She also does not allow anyone to bring in backpacks or other type of book bags because of what could be hidden and brought into the restaurant.

Cave Enterprises proudly offers scholarships to the young people who work at the restaurants as a way to promote their knowledge and future employment opportunities, and as an investment in the communities where the restaurants are located.

Finally, following the shooting, we were connected with the City's Office of Violence Prevention and all of its invaluable resources. The City is fortunate to have such personnel and services and in our time of need, we were grateful to be able to offer the

Office of Violence Prevention's grief counseling services to our employees and to others through their other community outreach programs.

**OBJECTIONS**

Cave Enterprises formally objects to the Report of the Licenses Committee and the recommendation of non-renewal under the following grounds:

- A. The committee failed to adopt the Report pursuant to § 85-4-6, MCO, and instead had the City Attorney's Office prepare it, and allowed it to be forwarded to the full Common Council without the approval or consent of the entire Licenses Committee;
- B. The committee permitted the summary of the Police Department reports to be read into the record despite its unreliability and without any testimony in support of the items listed in the summary by the Police Department officers who authored the reports;
- C. The May 24, 2022 notice and enclosures provided insufficient notice to Cave Enterprises for the possible reasons for non-renewal or imposition of penalties in violation of § 85-3, MCO; further, the City's notice for the initial renewal hearing before the Licenses Committee on May 17, 2022 was defective because Cave Enterprises did not receive the notice until May 19<sup>th</sup>, two days after the hearing; and further the City's May 24, 2022 notice for the June 6, 2022 renewal hearing before the Licenses Committee was defective because it failed to include the in-person location of the Licenses Committee hearing causing Cave Enterprises to arrive late to the hearing (the only room number provided on the notice is for the License Division in Room 105);
- D. The committee failed to conduct a hearing on the severity of the penalty imposed on Cave Enterprises separate from the hearing addressing whether the license renewal application should be renewed in the first instance, and failed to provide Cave Enterprises the opportunity to be heard on the issue of the severity of the penalty;
- E. The committee failed to follow its customary and required principles of progressive discipline when considering imposing sanctions such that it should have recommended a warning letter or suspension rather than non-renewal (Wisconsin courts have noted that such principles are appropriate in order to satisfy the equal protection requirements of the U.S. Constitution, 14th Amendment. *See Village of Menomonee Falls v. Michelson*, 104 Wis. 2d 137, 145-46, 311 N.W.2d 658 (Ct. App. 1981)); and
- F. The committee recommendation of non-renewal constitutes an unreasonable action and a violation of the vested rights possessed by Cave Enterprises in its Food Dealer License.

Mr. James Owczarski, City Clerk  
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**CONCLUSION**

At all times Cave Enterprises has recognized the seriousness of the situation and has taken actions and responsibility to implement changes that it can control. The policies and procedures that it had in place were reasonable and were being followed, but Cave Enterprises continues to review and revise them. In closing the restaurant for 21 days out of respect and to give the other employees and the community time to grieve and heal, Cave Enterprises already self-imposed a suspension.

Unfortunately, this tragic incident was caused by the criminal actions of those involved but Cave Enterprises has cooperated with the Police Department in its investigation. And most importantly, Cave Enterprises continues to offer its employees who were not involved in the criminal incident their continued employment with strong training, an inclusive workplace, and a safe environment.

The Committee could have – and should have – recommended a lesser sanction as non-renewal was an unreasonable penalty in light of all of the circumstances of this situation.

Please do not hesitate to contact me should you or any other City official have questions, wish to discuss, or need anything further from us.

Very truly yours,

Davis & Kuelthau, s.c.



Brian C. Randall

BCR:las

cc: All Via E-Mail  
stasst5@milwaukee.gov  
Mr. Todd Miller, Legislative Assistant for 2nd District  
John McNally, Esq. – Assistant City Attorney  
Mr. Adam Velarde – Cave Enterprises Operations, LLC  
Katherine M. Hampel, Esq. – Davis & Kuelthau, s.c.