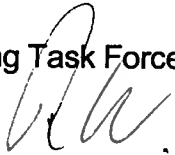


**City
of
Milwaukee**

INTERDEPARTMENTAL CORRESPONDENCE
LEGISLATIVE REFERENCE BUREAU

Memorandum

To: Hon. Louis Butler, Chair
Members of the Alcohol Beverage Licensing Task Force

From: Richard Withers, Legislative Fiscal Analyst 

Date: October 23, 2008

Re: Comparison of Alcohol Beverage Licensing Processes

This memorandum responds to the request of the Alcohol Beverage Licensing Task Force at its first meeting on Friday, October 10, 2008, for information comparing alcohol beverage licensing processes utilized in other communities with those implemented in the City of Milwaukee. The following information is based on initial research and analysis undertaken by the Bureau's Michael Talarczyk this past summer. I have supplemented his research and also included some historical information about the City of Milwaukee's past licensing practices.

Federal and State Overview

The 21st Amendment to the United States Constitution, which ended Prohibition in 1933, gave states the primary authority for determining whether alcohol could be sold legally and, if so, under what conditions. A fundamental premise of the state regulatory systems is that alcohol beverages are potentially hazardous products and, therefore, should be subject to special conditions not applied to other commercial goods and services. Licensing affects where, and how many, outlets can exist in specified areas; what types of outlets are permitted (on or off-premise consumption, allowing the sale of beer, wine and/or spirits); who can own, manage, sell and serve alcohol; and how the outlet can conduct its sales and serving practices.

With respect to off-premise consumption of alcohol beverages, the states generally fall into 2 categories: control states and license states.

In control state systems, the state is involved in the sale of alcohol beverages at the wholesale and/or retail level. Currently, there are 18 control states that operate as

the sole wholesalers of distilled spirits within their borders. Retail distribution, however, is conducted differently in each control state through state-operated retail stores, contract agency retail outlets, private retailers, or a combination of state, agency and/or private stores.

Wisconsin is one of 32 license states that does not participate in the sale of alcohol beverages at the state level. Some license states including Wisconsin, permit local municipalities to operate retail stores.

With respect to establishments which offer alcohol beverages to be consumed on-premise, there are generally 3 categories: exclusive state licensing, dual licensing, and exclusive local licensing. Thirty-five states issue alcohol beverage licenses solely at the state level, though localities may have varying influence in the process. Six states require alcohol beverage establishments to obtain both state and local licenses. Alcohol licensing authority is delegated to local governments in 9 states. However, while the states do not issue licenses, they may impose regulations that local governments must comply with. Wisconsin is a local licensing state.

Chapter 125 of the Wisconsin Statutes authorizes "every municipal governing body" to issue fermented malt beverage and intoxicating liquor licenses. The other 8 states with generally exclusive local licensing of retail alcohol sales are Hawaii, Maryland, Massachusetts, Minnesota, Nevada, Rhode Island, South Dakota and Wyoming. The states of Hawaii, Maryland and Nevada place licensing authority exclusively with county governments (except for the City of Baltimore). Those states that authorize local licensing generally permit the governing authority to either rely on state statutes for their alcohol review process or to further delineate alcohol licensing through local ordinance. Wisconsin statutes at ch. 125, Wis. Stats., authorizes regulation by local ordinance that is not inconsistent with the provisions of state statutes.

Key Features of the City of Milwaukee Alcohol Beverage Licensing Process

Chapter 90 of the Milwaukee Code of Ordinances regulates the sale of alcohol beverages within the city of Milwaukee. The application process for both new Class "A" and Class "B" retailer's licenses for the sale of either intoxicating liquor or fermented malt beverages can be summarized as follows:

- An application form is completed and submitted to the City Clerk.
- A notice of the application is published in the Daily Reporter at least 3 successive times.
- The applicant deposits with the City Treasurer the full amount of the fees required for the license(s) applied for.
- The application is referred to the Milwaukee Police Department, the Department of Neighborhood Services and the Health Department for investigation.
- The completed application, along with all reports, is referred to the Licenses Committee.
- The applicant appears before the Licenses Committee, testimony is heard, and the Licenses Committee recommends approval or denial.
- The recommendation of the Licenses Committee is forwarded to the Common Council for vote.

Key Features of Licensing in States and Cities Authorizing Municipal Licensing

The following summarizes some of the key elements of the licensing process in those states, like Wisconsin, that authorize municipal licensing. Where applicable, the processes of specific cities have been summarized.

- **Hawaii:** The state of Hawaii places licensing decisions in the hands of 5-member County Liquor Commissions. Members of the commission are appointed by the executive head of each county with advice and consent of the legislative body of the county.
- **Maryland:** The governor appoints members of a Board of Liquor License Commissioners in each county and the City of Baltimore. The actual title of this board and the number of members vary by county.
- **Boston, Massachusetts:** A 3-member City of Boston Licensing Board appointed by the mayor with approval by the city council is responsible for alcohol beverage license review. The Board is empowered to grant, deny and revoke licenses.
- **Minneapolis, Minnesota:** The Department of Licenses and Consumer Services handles application and all preliminary investigation before forwarding to the City Council's 6-member Public Safety and Regulatory Services Committee for review. The recommendation of the Committee is forwarded to City Council for vote.
- **Clark County, Nevada:** Nevada places liquor licensing authority with individual county boards of commissioners. The Clark County Board of County Commissioners has 7 elected members.
- **Providence, Rhode Island:** A 5-member Board of Licenses, appointed by the Mayor and approved by the City Council, is responsible for all license decisions, including alcohol.
- **Sioux Falls, South Dakota:** In Sioux Falls, all alcohol license applications are routed through City Zoning, City Planning and City Finance for approval before going before the 8-member City Council for final action.
- **Madison, Wisconsin:** A 13-member Alcohol License Review Committee ("ALRC") reviews and issues a recommendation on alcohol license applications prior to sending to the Common Council for vote. The 7 voting members of the ALRC include 2 Council members and 5 city residents, all appointed by the mayor subject to Common Council confirmation. The 6 non-voting members of the ALRC include the City Clerk or designee, president of the Madison Tavern League or designee, Chief of Police or designee, City Attorney or designee, Chancellor of the University of Wisconsin-Madison or designee and the City Alcohol Policy Coordinator.

- **Wyoming:** The city of Cheyenne requires liquor applications to be reviewed by the City Attorney, then by a 4-person Public Service Committee, and then are forwarded to the City Council for action.

Many local jurisdictions require notification to residents and/or property owners within a designated geographical area of the proposed establishment. Others require notification by placard or sign posted on the proposed premises. The applicant is usually responsible for all notification costs. The following information includes language contained in applicable local legislation.

- **Hawaii:** Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application to each of the following: (1) Not less than two-thirds of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of 500 feet from the nearest point of the premises for which the license is asked, provided that in meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of 100 feet from the nearest point of the premises for which the license is applied for.

In similar fashion and wording, Hawaii requires that two-thirds of registered voters residing within 500 feet of the premises and three-fourths of the registered voters residing within 100 feet of the premises be notified of the alcohol application.

- **Maryland:** The board shall cause a suitable sign or notice to be posted and to remain posted for a period of at least 10 days in a conspicuous place upon the premises described in the application. The posting shall be done at least 10 days before action upon the application, and the notice also shall specify the class of license applied for and the time and place fixed by the board for hearing upon the application.
- **Minneapolis, Minnesota:** The Department of Licenses and Consumer Services ("DLCS") shall notify by mail all residents, to the extent such notice is feasible, and property owners within 600 feet of the main entrance of the proposed establishment. Within the designated Downtown Business District, the department shall only be required to notify all residents and property owners within 300 feet of the main entrance of the proposed establishment.

The DLCS director shall assess and the applicant shall remit prior to public notification, all specific expenses incurred by the city, including those from identification of the property residents and owners, production of the notice, interdepartmental processing fees, and postage costs.

- **Rhode Island:** Notice of the application shall be given, by mail, to all owners of property within 200 feet of the place of business seeking the application. The notice shall be given by the board, body or official to whom the application is made, and the cost of the application shall be borne by the applicant. The notices shall state that objectors are

entitled to be heard before the granting of the license, and shall name the time and place of the hearing.

- **South Dakota:** If any resident of an incorporated municipality files a written request that the resident be notified of the time and place of hearing upon any specified application for a license, notice by mail shall be given to the resident.
- **Madison, Wisconsin:** The City Clerk shall notify all property owners situated in the block of the site for which the license is sought and all property owners within a radius of 300 feet of the proposed site of the dates of the hearings. Notification is currently done via postcard.
- **Wyoming:** When an application for a license has been filed with a licensing authority, the clerk shall promptly prepare a notice of application and place the notice conspicuously upon the premises shown by the application as the proposed place of sale.

Off-site meetings, whether conducted by a city official or the applicant, may be required as part of the evaluation process.

- **Boston, Massachusetts:** The applicant is required to hold a meeting with "neighborhood associations" to discuss the proposed establishment. No city official is required to attend. The head of the neighborhood association, on behalf of members, may then submit a letter to the city regarding the neighborhood's position on the application.
- **Minneapolis, Minnesota:** On any application for a new license outside of the Downtown Business District, DLCS shall hold a meeting on the application during evening hours at a location in the approximate vicinity of the premises proposed to be licensed. (Note: While the district Council member typically attends this meeting, it is "run" by DLCS.)

In some cases, a specified level of neighborhood objection to a proposed alcohol license may automatically result in denial of the application.

- **Hawaii:** If a majority of either the registered voters or the owners and lessees of record of real estate within 500 feet of the nearest point of the premises for which the license is asked have duly filed or caused to be filed their protests against the granting of the license, the application shall be refused.
- **Maryland:** If it appears that more than 50% of the owners of real or leasehold property or 50% of combined owners and tenants of real or leasehold property situated within 200 feet of the place of business for which application is made are opposed to the granting of the license, the application may not be approved, and the license applied for shall be refused.

- **Madison, Wisconsin:** No Class B license shall be issued for any premises in any district where 40% or more of the property fronting on both sides of the same street in the same block is used for residence purposes if a written objection shall be filed with the City Clerk signed by owners of more than 80% of such residence property.

In comparing alcohol beverage licensing procedures in states and localities that have municipal licensing, there are a number of differences in handling of neighborhood notification, neighborhood meetings, neighborhood objections and whether final decisions are made by a regulating authority or by the local governing board.

Chapter 125, Wis. Stats., clearly requires that the final determination about alcohol beverage licensing is to be made by the Common Council, a political body. This, in turn, has resulted in reliance on the elected representative of each Council District to advocate for the interests of residents and voters of the District.

Milwaukee Licensing Historically

Reliance upon Milwaukee's local governing body to make alcohol beverage licensing decisions was legislated even prior to Wisconsin statehood. The Milwaukee City Charter (titled, "An Act to incorporate the City of Milwaukee") was passed by the Fifth Legislative Assembly of the Wisconsin Territorial Legislature on January 31, 1846. Section 24 of the Milwaukee City Charter provides a statement of the general powers of the common council to enact ordinances. The language appears to be a precursor to the language now found at s. 62.11(5), Wis. Stats., stating the general powers of the Common Council to act to promote welfare and order.

Section 24 of the Milwaukee City Charter also contains 18 paragraphs addressing more specific powers. The first paragraph provides that the Common Council shall have authority:

- I. To establish rates for and license and regulate taverns, groceries and victualling houses, and all persons retailing or dealing in spirituous, venous or fermented liquors, and to license and regulate the exhibitions of common showmen or shows of any kind, or the exhibition of any natural or artificial curiosities, caravans, circuses or theatrical performances, and to provide for the abatement or removal of all nuisances, under the ordinances or at common law.

Following statehood, the Wisconsin Legislature also enacted ch. 29, Rev. Stats., entitled "Of the Sale of Spirituous Liquors." This legislation required that any person who sold "spirituous liquors" post a bond with the county, city, town or village in which the vendor resided or conducted business. Chapter 29, also provided, among other things, that cities could institute legal action on a bond to pay the costs of anyone who becomes a public charge due to intemperance when it is shown that the party posting the bond was in the habit of selling or giving liquor to the person who is a public charge.

It appears from this early history that responsibility for alcohol beverage regulation was, as a matter of Wisconsin policy, to be placed centrally with affected local governments, and particularly, with the City of Milwaukee. The role of an advisory committee, such as that

established in the City of Madison, may provide useful assistance to the Licenses Committee and the Common Council in license determinations. Options for involvement and facilitation of neighborhood responses to alcohol beverage applications, renewals, and revocation actions may also provide alternatives to reliance upon the advocacy of affected Council members.

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