



JAMES N. WITKOWIAK

ALDERMAN, 12TH DISTRICT

April 12, 2007

To the Honorable, the Common Council

Dear Members:

Re: Common Council File 061301

Attached are written objections to the recommendation of nonrenewal, based on neighborhood objection, of the Extended Hours Establishment license of John Brodersen, Agent for "Brodersen Management Corporation" for the premises at 7525 W. Good Hope Rd. ("Popeye's") in the 9th aldermanic district.

This matter will be heard by the full Council at its April 17, 2007 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached objections.

Respectfully,

A handwritten signature in black ink, appearing to read "James N. Witkowiak", written over a circular stamp. The stamp contains the text "James N. Witkowiak, Chair Licenses Committee".

James N. Witkowiak, Chair
Licenses Committee

cc: All Council Members
City Attorney's Office
Common Council/City Clerk – License Division
CCF 061301

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Office of the City Clerk
City of Milwaukee
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Milwaukee, WI 53202

Objection to Report and Recommendation of the Licenses Committee

DATE: April 9, 2007

TO: All Members of the Common Council

RE: Report on the Extended Hours Establishment Renewal Application of John R. Brodersen, agent for Brodersen Management Corp., for the premises located at 7525 West Good Hope Road, in the City and County of Milwaukee, Wisconsin ("Popeye's").

Dear Members of the City of Milwaukee Common Council:

We represent Popeye's. Please accept this as Popeye's objection to the Report and recommendation of the City of Milwaukee Licenses Committee to deny Popeye's Extended Hours Establishment License.

The subject establishment is a Popeye's Fried Chicken doing business at 7525 West Good Hope Road, Milwaukee, Wisconsin. An application to renew said license was filed with the Office of the City Clerk on February 9, 2007, and a hearing on such renewal application was heard on March 27, 2007. Popeye's had originally requested that its hours of operation be extended even further, from 3:00 a.m. to 4:00 a.m. on Thursdays, Fridays and Saturdays. This request was withdrawn at the hearing, however, when it became apparent there was a misunderstanding concerning the hours of operations that had been approved for the new McDonald's restaurant that will be operating nearby. Popeye's believed incorrectly that the McDonald's Restaurant was going to be a 24-hour operation. Popeye's amended its

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application and requested only that it be entitled to continue its current extended operating hours - 3:00 a.m. on Thursdays, Fridays and Saturdays.

With respect to renewal applications, Milwaukee Code of Ordinances Section 84-7-12(a), provides that, if the Chief of Police, the Commissioner of Neighborhood Services and the Commissioner of Health indicate that the applicant still meets the licensing qualifications, the application shall be submitted to the Common Council for approval unless there is a written objection filed at least forty-five (45) days prior to the date on which the license expires. In this instance, neither the Health Department nor Neighborhood Services nor the City of Milwaukee Police Department objected to Popeye's application. Also, there was no written objection filed by any interested party forty-five (45) days prior to the expiration of the license. Since there was no objection to the application, procedurally it does not appear that the matter should have been referred to the Licenses Committee for possible denial.

Nevertheless, the Licenses Committee did serve Popeye's with notice that its application may be denied. The reason for possible denial was "Neighborhood objection to the renewal of the license granting an extra hour of operation on Friday and Saturday night." Popeye's was not notified, however, that there was a possibility that its 3:00 a.m. extended hours might be taken away.

John Brodersen appeared at the March 27, 2007 License Committee meeting in support of Popeye's application. Again, there was no objection to the application and no witnesses appeared and gave sworn testimony in opposition to the renewal of Popeye's Extended Hours Establishment License. The only objection voiced to Popeye's Extended Hours Establishment renewal application (as amended) was from the alderman of the district in which the Popeye's restaurant was located, Robert Puente. Alderman Puente did not express any particular objection to the Popeye's restaurant operation, but expressed concerns over the impact extended hours establishments have in the area. This is referenced in Findings of Fact No. 5D which states, in pertinent part "... it was noted that the area suffers already from too much noise and litter generated by the current level of operation of these restaurants." This conclusion is unsupported by any evidence in the record of the case and is so vague that it is impossible for Popeye's to respond (then or now). Additionally, the bare statement does not demonstrate that Popeye's "has not met the criteria of Section 84-7 of the Milwaukee Code of Ordinances to allow renewal of the Extended Hours Establishment License for the premises because the dangers the activities allowed by the licensee represents to the health, safety and welfare of the citizens of the City of Milwaukee" (as asserted in Conclusion of Law No. 2). In fact, there was no evidence of any ordinance violations by Popeye's or any description of any specific problems at or around the restaurant connected with Popeye's Extended Hours Establishment License.

Milwaukee Code of Ordinances Section 84-7-10(e) states that the recommendation of the committee must be based on evidence presented at the hearing. Milwaukee Code of Ordinances Section 84-7-10(e)(1-5) lists subjects upon which evidence may be taken which

should be considered in evaluating whether to grant a renewal license. No testimony was taken and no facts were presented into the record from which the Licenses Committee could conclude that any of those factors warranted the refusal to renew Popeye's Extended Hours Establishment License. There was also no showing of any change of circumstances from which it could be concluded that it would be reasonable to take away a vested property right that Popeye's already had in its Extended Hours Establishment License by refusing to renew such license.

The Common Council should not approve the recommendation of the Licenses Committee to deny Popeye's renewal application for both procedural and substantive reasons. There was no objection to Popeye's original application and it should have gone directly to the Common Council. Even so, the notice of possible neighborhood objection was limited to the extra hour of operation on Saturdays and Sundays. When Popeye's understood the facts relative to the status of the McDonald's license, Popeye's withdrew its request for an extra hour of operation. Popeye's was not on notice that its current extended hours might be denied, and the denial of any extended hours of operation was not based on Popeye's failure to meet the criteria of Milwaukee Code of Ordinance 84-7-10(e).

Popeye's is committed to being a good corporate citizen and has been. There was no evidence otherwise at the Licenses Committee meeting. Nevertheless, Popeye's always remains open to addressing any concerns the City of Milwaukee may have to the effects of extended hours operations.

Therefore, Brodersen requests that the Common Council overrule the recommendation of the Licenses Committee and approve its Extended Hours Establishment renewal application.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Mayhew', is written over a circular stamp. The signature is fluid and extends to the right.

GERALD J. MAYHEW