

City of Milwaukee

Alcohol Beverage Licensing Task Force

Preliminary Report and Recommendations

April 13, 2009



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Greetings:

The Alcohol Beverage Licensing Task Force was convened by Common Council President Willie Hines to study the current alcohol beverage licensing process and to make recommendations for changes or improvements to this process, if deemed necessary. After a number of meetings and much discussion, the task force has made the following preliminary recommendations regarding the city's licensing process. Now that these preliminary recommendations have been drafted, the task force would like to hear, and take under consideration, feedback from the public on our suggestions. Our final recommendations will be submitted to the Common Council after taking into account such feedback at the upcoming scheduled public hearing.

I believe that the preliminary recommendations we have proposed have taken into account the varied concerns we have heard up to this point from those having an interest in a fair and efficient process, and I would like to thank the task force members for their hard work and dedication.

Respectfully,

A handwritten signature in black ink, appearing to be "L. Butler", written over a horizontal line.

Justice Louis Butler
Chair, Alcohol Beverage Licensing Task Force

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INTRODUCTION

The City of Milwaukee Common Council established the Alcohol Beverage Licensing Task Force (ABLTF) on July 30, 2008 with the adoption of Resolution File # 080461. This resolution provided in part that:

“...the task force is directed to study the current alcohol beverage licensing process, evaluate the extent to which this process maintains proper checks and balances in decision making, and make recommendations for changes or improvements to this process....”

ABLTF members were confirmed by the Common Council and include: former Justice of the State Supreme Court, Louis Butler, appointed Chair by the Common Council President; Joel Brennan, appointed by the Mayor; Sallie Ferguson, designated by the Great Lakes Beverage Association; Rebecca Grill, designated by the City Clerk; Edward J. Lump, designated by the Wisconsin Restaurant Association; City Comptroller Wally Morics, appointed by the Common Council; Sharon Nowak, designated by the Wisconsin Tavern League; Bruce Schrimpf, designated by the City Attorney; and Sergeant Chet Ulickey, designated by the Chief of Police. Tobie Black, was appointed Staff Assistant to the ABLTF by the City Clerk.

Common Council President, Willie L. Hines, Jr., addressed the first meeting of the ABLTF on October 10, 2008. President Hines reviewed the purposes for creation of the ABLTF noting the special circumstances leading to its formation. These included the indictment and prosecution of a former member of the Common Council related to abuse of the licensing process. He noted that improvements in the licensing process were needed to restore public confidence in the integrity of the Common Council and the licensing system.

The ABLTF held 4 public meetings during the fall of 2008 including a public hearing on December 11, 2008, at which members of the public provided comment and suggestions. An additional 5 public meetings were held in the winter of 2009. During these meetings, the ABLTF heard presentations from Rebecca Grill, Manager of the License Division of the Office of the City Clerk, Ron Leonhardt, City Clerk, Bruce Schrimpf, Assistant City Attorney assigned to advise the Licenses Committee and to represent the Common Council in judicial proceedings related to licensing, Alderman

James A. Bohl, Jr., Chair of the Licenses Committee, Alderman Michael J. Murphy, Chair of the Finance Committee, and others. The agendas and minutes of these meetings are accessible on the Internet at <http://milwaukee.legistar.com/calendar.aspx>.

Over the course of 3 meetings, the ABLTF deliberated upon a series of recommendations and questions for review suggested by task force members, adopting recommendations related to pre-application, application, certification, scheduling committee consideration, hearing procedures, and procedures for Common Council consideration. The focus of these recommendations is intentionally limited to licensing procedures and not upon other license regulation such as hours of operation, license enforcement, or designating the types of establishments that may be eligible for alcohol beverage licenses.

A public hearing has been scheduled on the evening of April 16, 2009, beginning at 7:00 p.m., to provide members of the public with an opportunity to comment on a preliminary list of recommendations.

The Alcohol Beverage Licensing Task Force (ABLTF) offers the following preliminary recommendations for review and comment by the public before submission of final recommendations to the Common Council of the City of Milwaukee.

For the process of applying for a license and for certifying and scheduling applications for committee consideration:

- 1. That the City Clerk's License Division create and publish a pamphlet describing the process for new license application and license renewal applications, including a statement of the applicant's rights and obligations during the application and renewal application process.**

Background

Statements received from the public and discussion by task force members identified concerns that some applicants for alcohol beverage licenses are not well-informed about the licensing application process. This may result in confusion about the role and authority of council members in the process. Applicants and potential applicants for whom English is not their primary language may be at particular risk. Attention was also called to the fact that a pamphlet is already published for neighbors of problem alcohol beverage establishments.

- 2. That notices of Licenses Committee meetings scheduled to consider a new or renewal license application be provided to all addresses within 500 feet of the premises identified in the application.**

Background

The License Division currently notifies council members of a pending or renewal application in their districts. At the request of the council member, a list of addresses up to 250 feet of the premises or, alternatively, the nearest

100 addresses will be notified. This recommendation requires notice in all cases and substantially increases the number of properties receiving notice sent by the License Division.

3. That the Common Council enact periods of 60 days or 2 council cycles, whichever is less, for scheduling of a new license application before the Licenses Committee upon certification by the License Division that the application is complete.

Background

Statements received from members of the public and information provided by License Division Manager suggested that current practices to hold new license applications at the request of the council member in whose district a proposed premises is located sometimes resulted in delays of as much as 6 months in processing new applications. It was stated that a council member should be able to schedule meetings with the applicant or with neighbors within the proposed time limits if he or she chooses for a new license.

4. That the decision to schedule a renewal application before the Licenses Committee be made administratively by the License Division and based solely upon information contained in a police summary.

Background

The task force discussed the fact that the grant of an initial license creates a property interest. This property interest carries with it certain due process considerations requiring that the renewal process be handled fairly, and that licenses be treated consistently. Current practice permits scheduling of a license for a renewal hearing at the request of council members or upon receipt of neighborhood complaints. These reasons may not be consistent with the limited reasons for non-renewal set forth in state law in s. 125.12(2)(ag). These issues would usually appear documented within a police report or summary.

For Conduct of Committee Hearings on Alcohol Beverage Licensing, Renewal, Suspension and Revocation

5. That, once scheduled, a new application may be held only one time at the request of the applicant, interested parties or the local Common Council member for a specific reason chosen from those enumerated in the Milwaukee Code of Ordinances. The motion relating to the hold should include a specific timeline for rescheduling, be made in writing and be presented at the scheduled hearing. The timeline for rescheduling should not exceed 2 regularly-scheduled committee meetings after the date of scheduling of the initial hearing, unless special circumstances are presented to committee members at the hearing.

Background

Members of the task force noted that there is no time frame limiting the period that a license application may be held. Periods as long as 6 regularly scheduled meetings were discussed and rejected by the task force. The question of who may request that a matter be held was raised. It was noted in discussion that the Committee Chair has discretion to refuse the request. It was further noted that the purpose of this recommendation was to limit the ability of a council member to indefinitely delay the matter.

- 6. That the Common Council adopt rules of decorum for members of the Licenses Committee covering matters such as members leaving room during testimony, members being rude to witnesses, the need for reasonable breaks, members not listening to the evidence being presented but engaging in private conversations while the meeting is in session.**

Background

The matter of decorum and lapses in decorum were raised by a number of members of the public and repeated by task force members in discussion during several meetings. Some of the issues raised included committee members having side conversations while testimony is heard, committee members making comment and offering opinions on the matter prior to receipt of all the evidence. Task force members concluded, however, that the specific rules should be left to the Common Council to determine. The initial recommendation was subsequently amended to include specific activities that should be addressed.

- 7. That the Licenses Committee institute a reasonable, uniform time limit for neighbor testimony to be applied equally to all witnesses.**

Background

Task force members noted that allowing some neighborhood witnesses more time to testify than others can create an appearance of favoritism. Consistent time periods may promote confidence in the fairness of the process.

- 8. That the Common Council establish criteria for determining when concentration is an issue based on land use for that particular neighborhood.**

Background

Members of the public, including licensees, commented that the issue of alcohol beverage concentration as a reason for denial of a new premises license appears arbitrary. Examples were given of licenses being granted within the same neighborhood as a premises which had recently been denied. Task force members discussed the issue on several occasions

noting the variety of circumstances and conditions that could influence a concentration criterion for any specific neighborhood.

- 9. That the Common Council require that objections to a new license or license renewal made by a Council Member be substantiated in a form to be prescribed by the Common Council.**

Background

There was little discussion of this specific recommendation. General comment had been made by members of the public and discussed by task force members noting that it did not seem fair that an unsubstantiated objection, or an objection based on hearsay, could be used to slow the application process.

- 10. That members of the Common Council, who are not members of the Licenses Committee, not be permitted to recommend penalties to the Licenses Committee.**

Background

Assistant City Attorney Bruce Schrimpf noted that the function of the Licenses Committee is quasi-judicial and deliberation should not be influenced by persons who are not parties to the proceedings or members of the committee. The appearance that the committee defers to the wishes of a local council member may undermine public confidence in the process. When a renewal or revocation proceeding is considered by the Common Council, then any member may participate and offer recommendations.

- 11. That the Licenses Committee establish a “pre-signup” sheet outside the committee room to record the names and addresses of those prepared to speak in support of or opposition to the license.**

Background

Task force members discussed 2 purposes for the recommendation. First, it may improve management of the hearing and predictability of hearing time. Second, it would make verification of the identity and address of witnesses somewhat easier.

- 12. That, with the exception of the applicant, counsel for the applicant, and law enforcement personnel, witnesses be required to use the standing microphone.**

Background

Comments from the public and by task force members suggested that allowing some witnesses, particularly neighborhood witnesses to be seated at the table and requiring others to use the standing microphone can give the appearance of favoring one side or another.

- 13. That the method by which the Board of Zoning Appeals schedules and conducts hearings be explored by the Licenses Committee with special attention given to the scheduling of contested versus non-contested items, and the time the meetings begin.**

Background

The practices of the Board of Zoning Appeals (BOZA) in scheduling were described to the ABLTF. BOZA separately schedules cases known to be contested or requiring lengthier presentation from other matters. BOZA also schedules late afternoon and evening meetings. Alcohol beverage license hearings are currently scheduled by aldermanic district. Contested matters may result in many hours of waiting for parties to uncontested matters.

- 14. That greater attention be paid to the “business plan” of the applicant. There should be a requirement that the applicant have the resources to follow the plan. The issuance of a license and occupancy permit should be conditioned on fulfillment of the business plan.**

Background

Comments by the public and discussion by task force members noted that in some cases alcohol beverage licenses are granted for establishments based upon business plans that include future installation of restaurant equipment. Failure to install the equipment and engage in full food service results in a different character of business and type of clientele than the neighbors initially contemplated. This may result in neighborhood conflict. Whether the initial plans were made in a good faith belief that resources would become available, or, as it was suggested, the plans were included to avoid neighborhood objections but not actively pursued, the task force concluded that there should be more assurance that plans are implemented.

- 15. That previous premise reports by the police be uniformly considered by the Licenses Committee.**

Background

Task force members noted that in some new application cases the Licenses Committee considers problems with the premises under operation of a previous licensee, but this is not uniformly done. Task force members also expressed concern that, in cases where a license has not been renewed or has been revoked, it was difficult to assure that a new license applicant was independent from the previous operator, or was simply a “straw-person.”

16. That the Common Council explore whether hearing examiners be engaged for license revocation hearings.

Background

Task force members noted that revocation hearings are often long proceedings involving many witnesses, complex evidentiary questions, and frequently involve significant questions of law. The ABLTF was advised that a report, including recommendations, filed by a hearing examiner could properly be reviewed by the Licenses Committee, providing that the licensee was permitted an opportunity to address the report. A recommendation made to the Common Council would be based upon the report but the Licenses Committee recommendation would be its own. It was noted by task force members that this process could save considerable committee time currently spent on an increasing number of revocation actions.

17. That the Common Council adopt by rule, or otherwise, a procedure precluding a member of the Licenses Committee from advocating a position as a witness on the granting, denial, renewal, revocation, or suspension of a license and also voting on the issue as a member of the Licenses Committee.

Background

Task force members were advised that, due to the quasi-judicial nature of the Licenses Committee role in application and licensing cases, it is inappropriate for a member of the committee to participate in voting on a motion related to the license if the member has already reached an opinion prior to the completion of evidence and argument of the parties.

18. That the Common Council consider other avenues for reviewing license applications such as those for direct sellers, home improvement contractor and junk collectors and dealers to allow the appropriate licensing committee to focus on alcohol beverage licensing and extended hours establishment licensing.

Background

Comments were made by the public and concerns expressed by task force members related to the volume of work by the Licenses Committee. It was suggested that there may be alternative procedures for handling a variety of licenses including bartender licenses. Licenses that are within the jurisdiction of the Public Safety Committee are also included in the recommendation.

19. That the Common Council and Licenses Committee should give care that 5 members of the Licenses Committee are present at all times for Licenses Committee meetings. The Common Council should consider designating 2

alternates to serve when a committee member cannot be present or is excused for a time period.

Background

Task force members discussed the importance to applicants and licensees of having a full complement of Licenses Committee members present where possible. Failure of motions on 2 to 2 tie votes, or the failure or success of a motion by a minority vote of 2 when only 3 members are present, can undermine the confidence of applicants and the public in the outcome.

For Common Council Proceedings

20. That when the Licenses Committee recommends denial of a new license establishment, the applicant for the new license be provided an appeal to the Common Council.

Background

Task force members were advised that new license applicants, having no previously established property interests in a license, were not entitled to a process requiring Common Council consideration of a license denial under state or federal law. A majority of task force members supported the recommendation. The ABLTF did not discuss whether the applicant should be provided an opportunity to appear before the Common Council or whether the appeal may be limited to written objections, exceptions or arguments.

General Recommendations

21. That the Common Council amend chapter 90 to require that applicants (new and renewal) summarize and document any contacts relevant to the new or renewal application process that they have had with Council members during the time of their initial or renewal application. Consideration should be given to requiring Council members to prepare the same documentation. The documentation should be available to the public and the Licenses Committee.

Background

This recommendation was proposed by the City Attorney. Task force members discussed the potential burden of such reporting, and also the importance of transparency and public confidence in the process.

22. That the Common Council make the recommendations of the Alcohol Beverage Licensing Task Force a part of the Milwaukee Code of

Ordinances, and as applicable, to the General Licensing Chapter (ch. 84) where appropriate.

Background

Task force members noted during several meetings that many of the same concerns that resulted in the formation of the ABLTF are applicable to other license procedures. The resolution establishing the ABLTF notes that, "...should the task force find that in the course of its study its recommendations have applicable to other licenses which are granted by Common Council action, the task force shall include those findings in its report."

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