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April 29, 2010

CITY OF MILWAUKEE  
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VIA MESSENGER

Mr. Willie L. Hines, Jr., President  
Milwaukee Common Council  
City Hall, Room 205  
200 E. Wells Street  
Milwaukee, WI 53202

Ronald D. Leonhardt, City Clerk  
City Hall  
Room 205  
200 E. Wells Street  
Milwaukee, WI 53202

Re: *Objections to Nonrenewal of Tavern TEN THIRTY, INC. d/b/a Martini Mike's  
730 North Old World Third Street Milwaukee, Wisconsin 53203*

Dear Mr. Hines and Mr. Leonhardt:

Enclosed herewith please find the Objections filed by this office to the proposed revocation of the Tavern Amusement (Cabaret/Dance) license of our client, Ten Thirty, Inc. d/b/a Martini Mike's. The original and one copy of the Objections are being delivered to Mr. Leonhardt. I ask that the extra copy be file stamped and returned to our messenger. A separate copy is being delivered to Mr. Hines.

My partner, Franklyn Gimbel, would appreciate an opportunity to appear before the Common Council at its meeting on May 4, 2010 to further speak to the objections. Thank you for your anticipated cooperation.

Sincerely,

KATHRYN A. KEPPEL

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Enclosures

c Mr. Bruce D. Schimpf  
Mr. Michael Kozak

*municipalasad/clerk2010-04-29*



In re the Tavern and Tavern Amusement License of

TEN THIRTY, INC.  
d/b/a Martini Mike's  
730 North Old World Third Street  
Milwaukee, Wisconsin 53203

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**OBJECTIONS  
TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
RECOMMENDATION OF LICENSES COMMITTEE**

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Ten Thirty, Inc., d/b/a Martini Mike's, and Michael Kozak, by their attorneys Gimbel, Reilly, Guerin & Brown LLP, hereby object to the findings of fact and conclusions of law issued by the City of Milwaukee Licenses Committee and object to the Committee's recommendation to deny renewal of Martini Mike's Tavern Amusement License, also known as its Cabaret/Nightclub License, for the premises located at 730 North Old World Third Street in the City and County of Milwaukee, Wisconsin. As grounds, Kozak informs and advises the Common Council as a body of the whole as follows.

1. Kozak is a corporate officer for Ten Thirty, Inc. and is the owner/operator of Martini Mike's. Several witnesses at the Committee hearing confirmed that Kozak has taken definitive action to avoid any problems inside

and outside Martini Mike's, including full pat-downs of male patrons entering the premises, inspection of women's handbags, use of plastic cups instead of glassware, and closing earlier than allowed under the law to avoid congestion outside of the club and in the streets at bar time.

2. Paragraph 5 of the Findings of Fact outlines police incidents that occurred at Martini Mike's from April 16, 2009 through March 10, 2010. All of the incidents described within paragraph 5, subparts A through I, are hearsay reports. The factual bases for those reports were not presented to Kozak or his counsel to enable them to confront and cross-examine witnesses to such alleged incidents prior to the Committee hearing.

3. The Council also should consider several significant mitigating circumstances.

4. The first "incident" (§5.A) involves a citation issued to Kozak at the Potawatomi Casino on Canal Street on April 16, 2009. Kozak testified that he went to the casino after he closed Martini Mike's and parked his motorcycle in a no parking zone. When four to five security guards approached him, he explained confusion regarding parking and, although most of the guards were accepting of his explanation, one of them was not. Voices were raised and the described citations were issued. This incident has no relevance to the operation of Martini Mike's or the safety of the public in or around Martini Mike's.

5. The May 30, 2009 incident (§5.B) involved a fight outside the premises over thirty minutes after Martini's Mike's closed for the night. As noted above, no police officers or citizen witnesses appeared to testify regarding this incident. The assertions that there was a group of fifty people outside, that there was a man with a gun inside Martini Mike's and that shots were fired inside are unsubstantiated hearsay.

The persons who did testify regarding the incident were Kozak, Martini Mike's head of security, Eric Folsom, and Kelry Olson, a regular patron of Martini Mike's, who on that evening was working at the Best Western across the street from where the alleged shooting occurred.

Folsom testified that the bar was closed and cleared of patrons and he was beginning to clean up when he heard noises outside at around 2:15 a.m. He noticed what he described as a small gathering of about fifteen people in front of a then-empty site. He observed an altercation between two men whom he did not see in Martini Mike's that night and saw one man pull a gun. Folsom then immediately ran back into Martini Mike's and he heard shots fired. He stated that there were errors in the police report: there may have been fifty people who left Martini Mike's at closing, but there were only fifteen people on the street after 2 a.m. He also clarified that a police officer attempted to enter the premises, but the door was locked. The officer was allowed to enter, but Folsom believed

the officer was angry because the door was locked. He stated the door was he locked the door after him because the bar was closed.

Olson testified that she as she was working on May 30, 2009, she looked out the window of the Best Western and saw a group of ten or maybe fifteen people, not fifty people, creating a disturbance across the street. Someone from the hotel called the police. She observed the police interaction with this group, again, fifteen, not fifty people, and later was questioned by police at 3 a.m. that day.

Kozak testified that he was at the front door around 2 a.m. when he saw people arguing in the street. One man pushed another down, and when that man got up, the first man pulled a gun. Kozak went into the premises and behind the bar. He answered the door when the officer knocked and let the three officers, and later a detective, into the building. There were no patrons in the premises at the time.

Given that Martini Mike's had closed earlier than the time of this incident, it is very likely that the assembled group had just left another establishment on Old World Third Street and were returning to their hotels or vehicles when the incident occurred. Kozak and his employees cooperated with the investigation. Kozak acknowledges he was cited for a "Disorderly Premises" violation, but notes that his attorneys presented all of these facts to the Assistant City Attorney

prosecuting the citation, who agreed to dismiss it; however, Judge Hill denied the dismissal motion and the case is set for trial.

6. The June 27, 2009 incident (§5.C) involved a confrontation between an off-duty employee of Martini Mike's named Dan Wagner. Folsom testified that he witnessed the incident. He said Wagner and his girlfriend were at Martini Mike's celebrating Wagner's birthday. Wagner's girlfriend got drunk and, as she was leaving the area, almost got hit by a car. She and the driver got into a fight, and Wagner, deciding to defend his girlfriend, punched and kicked the driver. The man identified as "Dee" then hit Wagner. Presumably, the other men who got involved saw a man hitting a woman and came to her aid.

This incident could have occurred at any one of hundreds of well run establishments across the City. A patron has too much to drink and leaves the premises without incident. Upon leaving, however, the patron and the driver of another vehicle get into a fight, and the patron's significant other defends her. Martini Mike's, in fact no establishment, should be blamed and cannot be expected to police the activities of patrons for the inappropriate actions by third parties after they leave the premises. off the licensed premises.

7. The July 26, 2009 incident (§5.D), like the April 16, 2009 incident set forth in §5.A, did not involve the operation of Martini Mike's. After closing the premises on that date, Kozak and a friend decided to take their Harley

motorcycles for a ride, circling the block. The motorcycles had custom pipes and the loud noise attracted the attention of patrolling officers. Kozak did not contest the excessive noise citation issued to him. Again, this after hours incident occurring outside the scope of Kozak's operation of Martini Mike's is irrelevant to the operation of the licensed premises.

8. The March 6, 2010 incident (§5.E) is described as the police being dispatched to Martini Mike's in response to a gun complaint, the suggestion being that there was a person at the premises with a gun. This was not the case, as testified to by Gary Mefford, the neighbor who stated that he was the "anonymous caller" referred to in the police report. Mefford stated that he observed a woman run out of Martini Mike's and soon after two men followed. The men entered the burgundy vehicle, which was already being driven through the area, and it was only after the men entered the vehicle that Mefford saw the gun. Mefford stated that he did not see either of the men who left Martini Mike's was holding a gun as they left the premises. That Mefford did not see anyone leaving Martini Mike's with a firearm is consistent with the bar's practice of patting down male patrons and checking women's handbags as they enter the premises.

The only concrete facts this report suggests are that two men left Martini Mike's and associated with someone who had a gun after they left the club.

Under no circumstances can Kozak control the character or behavior of persons with whom his patrons associate outside the area of the licensed premises.

The March 6 report also refers to a "citizen" who approached police complaining about noise. That citizen was identified at the hearing as JT Worley. His complaints and those of other neighbors are addressed below.

9. The statements in ¶5.F, that Martini Mike's begins closing early, are inaccurate only to the extent that the premises often close even earlier. Folsum testified that current protocol is to call last call at 1:15 a.m., turn on the lights at 1:20 a.m., stop the music at 1:30 a.m. and clear the bar by 1:45 a.m. He stated that the area outside the premises is usually cleared by 2 a.m., long before official bar time and before the other area bars close.

10. The locomotive horn referred to in ¶5.G was installed on a truck owned by a Martini Mike's patron. Kozak testified that he never heard the horn inside the bar, but after Worley complained about it, he investigated and learned the vehicle belonged to one of his patrons. The following weekend he told the patron not to sound the horn in front of the club or he would not be admitted, and he has not heard the horn since then. Worley stated that Kozak had the conversation, but the owner now parks in front of his building and sounds the horn. Again, Kozak understands the disruption the horn causes, but questions what he can do to prevent the truck owner's behavior outside the club on a



public street. The most that Kozak could do is what Worley already does – contact officers to make a noise complaint. It is not fair to lay blame for the childish, retaliatory antics of the truck owner at Kozak’s feet.

11. Paragraph 5.H. refers to testimony regarding litter, broken liquor bottles and glassware in the alley. Worley, his girlfriend Andrea Lindsey and other neighbors complained about litter, and it was Lindsey’s dog that stepped on broken glass and picked up a chicken bone outside the premises. However, none of these witnesses could refute the testimony of Kozak and Folsum that Martini Mike’s has not used glassware since December 2009, and that some of the smashed bottled could not have come from Martini Mike’s because Martini Mike’s does not serve some of the brands (*e.g.* Rolling Rock beer). Folsum also testified that Martini Mike’s serves food only if there is a party – maybe three times per year.

Given Martini Mike’s use of plastic instead of glassware, any continuing problems with broken glass in the alley demonstrate that Martini Mike’s and its patrons are not the sole cause of the issues in the neighborhood. In addition, because Martini Mike’s rarely serves food only very rarely, regular problems with food containers and remnants cannot be attributed to the premises. Moreover, as noted in the report, the witnesses supporting renewal of Martini Mike’s licenses all testified regarding the efforts made by Kozak to clean the area

around the premises each night after closing, including placing garbage cans at the front door, sweeping past the front door of the neighboring building, sweeping halfway up the alley, and sending staff out to clean up any litter, regardless of the source.

12. Paragraphs 5.E. and 5.I refer to noise generated by patrons outside the premises. Kozak recognizes that noise is an issue and he makes an effort to curtail noise as much as possible. Kozak presented to the committee a large laminated sign posted at the premises that reminds patrons to be courteous of the neighbors when leaving the premises. In addition, Martini Mike's DJs and hosts make regular announcements asking patrons to be mindful of the neighbors' rights. Unfortunately, there is only so much that a licensee can do to control the behavior or decibel level of his patrons outside the premises.

A licensee can evict a patron and call the police, but if the evicted patron chooses to engage in a loud argument with the police officer, what more would the Committee have the licensee do? Under the Committee's reasoning, the Bradley Center should have its licensure reviewed because of the excessive noise, traffic jams, honking horns and unruly behavior outside that facility after the Bucks' victory on April 26.

13. Paragraph 5.J refers to testimony of Andrea Lindsey that on one occasion she observed someone urinating on the side of her apartment building

-- to clarify, not on her personal property. Kozak and Folsom both testified that they inspect the outside of the premises during the clean up phase each night. Folsom stated that if he discovers urine or vomit he personally takes a bucket filled with water and bleach to clean the area.

13. Paragraph 5.K. refers to parking issues. As noted in the report, Kozak has placed illegal parking signage in the alley and also has placed cones to prevent parking in no parking zones. The neighbors seemed satisfied with those efforts and indicated that the parking problems had been alleviated.

14. One issue that was not contained in the police report, but which engendered a great deal of attention during the hearing, was Kozak's ill-advised and inappropriate behavior on March 3, 2010. The premises were open for a special Wednesday comedy night. Kozak testified that he did not intend to work that evening because he attended a Bucks game. After the game, he came to the premises to watch the show and soon became part of it, as the victim of a "roast." Unfortunately, Kozak had too much to drink and became too comfortable with the language and banter being used by the featured comedian, an African American, and the "roasters." At one point, Kozak grabbed the microphone, and said something akin to: "You motherfuckers I pay the bills, you niggers can head for the hills."

Homer Blow, the DJ presiding over the event, immediately took the microphone away from Kozak. Blow testified that he told Kozak he was being very disrespectful, that it was Kozak's "urban" clientele who paid the bills, and that what Kozak said was very hurtful. Blow also testified that tensions were high and he took control of the crowd telling them to stay calm and leave.

Kozak does not deny the incident or the inappropriateness of his conduct. However, he does wish to address some portions of Blow's account. First, as testified by Kelry Olson, the crowd did not become unruly; it became very quiet and left, not because of Blow's request, but because it was closing time. Second, Blow stated that Kozak never apologized for his comments, but instead "danced around" it. He acknowledged Kozak came on Blow's radio show to address his comments. On the show, Kozak admitted making the statements. Kozak testified that he was on Blow's radio show for over an hour, fielding calls and answering all questions about the incident. In addition, Kozak responded to the video of the incident and comments posted on Facebook, providing his mobile and land phone numbers, and received numerous calls from people who wanted to discuss the issue. Kozak also agreed to an interview with *Milwaukee Journal Sentinel* columnist Eugene Kane, in which he expressed his regret:

When I reached him for comment Friday, Kozak clearly seemed still shaken by the controversy and said he deeply regretted his actions.

"What I did was completely wrong," said Kozak. "It was a very stupid word to say."

He denied using the word in his personal life and insisted his club had always been one of the most racially diverse nightclubs in downtown Milwaukee. He said he had learned a valuable lesson.

<http://www.jsonline.com/news/milwaukee/87602817.html>. Kane quoted music promoter Jerald Adams, who was present at the event, as saying:

"It's just way too much ado over nothing," said Adams, who is African-American. He said Kozak was guilty of saying the wrong thing but also noted the N-word often gets used in nightclub comedy acts and hip-hop music.

*Id.*

Kane added his own thoughts, saying:

I've been on record for years about my desire to ban the N-word from all public speech regardless of race. It's an ugly word with an ugly history. The fact it's also one of the most confounding examples of a double-standard in the English language proves why it has outlived its usefulness.

If the standards for whites using the N-word continue to be harsh and career ending, the same consequences have to apply for blacks who use the N-word or else it will become impossible to expect people to understand the difference.

*Id.*

The bottom line is that Kozak made a horrible mistake in using the racial slur and inappropriate language. He knows his comments were 100% inappropriate. Even though similar language was used that same night by a hired comedian, he understands that as a white male, he crossed the line. Kozak testified that the use of the slur was not indicative of any biases against African Americans, a sentiment echoed by witnesses Kelry Olson, Amra Qudrac, JB Adams ( the same person quoted in the Kane column), and Tithana Kerr, who each testified that they did not believe Kozak was biased against African

Americans and that his use of the "N-word" on March 3, 2010 was not reflective of his attitude toward people of other races.

Dated this 29<sup>th</sup> day of April, 2010.

GIMBEL, REILLY, GUERIN & BROWN LLP

By:

  
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