

## COMMITTEE ASSIGNMENTS

### **CHAIR**

- Licenses Committee

### **VICE CHAIR**

- Zoning, Neighborhoods and Development



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

### **MEMBER**

- 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

February 4, 2022

To the Honorable, the Common Council

Dear Members:

Re: Common Council File Number 211557

Attached are written objections to file number 211557, Motion relating to the recommendations of the Licenses Committee relative to licenses, relating to a recommendation of:

Renewal with a ten (10) day suspension, based on the police report and aldermanic testimony of the Class B Tavern and Public Entertainment Licenses for Nathan T. Tusler, for the premises located at 1110 N Dr. Martin L King Jr DR. ("White Tail ") in the 4th aldermanic district.

Renewal with a ten (10) day suspension, based on police report of the Class B Tavern and Public Entertainment Licenses for Felipe Martinez Jr., for the premises located at 626 S 5TH St. ("Walkers Lounge & Events") in the 12<sup>th</sup> aldermanic district.

These matters will be heard by the full Council at its Tuesday, February 8, 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 211557





LAW & CONSULTING, S.C.

February 2, 2021

Emil Ovbiagele  
emil@ovblaw.com

[via Email]

City of Milwaukee City Hall  
Attn: Jim Owczarski, City Clerk  
200 E. Wells Street, Room 205  
Milwaukee, WI 53202  
jowcza@milwaukee.gov

**RE: Double Dragon MKE LLC d/b/a Whitetail MKE**  
1110 N Dr Martin L King Jr Dr.  
License Renewal- Objections to Committee's Findings

Dear Mr. Owczarski,

Please be advised that that my firm represents Double Dragon MKE LLC d/b/a Whitetail MKE (the "Establishment") as it related to the above-reference matter.

We write to formally object to the 10-day license suspension issued to the Establishment by the Common Council License Committee on January 25, 2022, and to reserve time to address the Common Council at its February 8, 2022 meeting. It is our position that the proposed 10-day suspension is excessive based on the facts, is arbitrary and capricious, and is not supported by law or credible evidence.

First, the licensing committee hearing proceeded under no identifiable legal burden or standard of proof. In the United States, constitutional due process protections apply to procedures affecting licenses necessary to engage in one's livelihood, *Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, (1971). Further, it has been held that the interest in renewal of a liquor license is a "property interest" for purposes of the Fourteenth Amendment. *Reed v. Village of Shorewood*, 704 F.2d 943, 949 (7th Cir.1983). Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property. Thus, in deciding what process constitutionally is due in various contexts, the Court repeatedly has emphasized that "procedural due process rules are shaped by the risk of error inherent in the truth-finding process..." *Mathews v. Eldridge*, 424 U.S. 319, 344, 96 S.Ct. 893, 907 (1976).

The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." *Addington v. Texas*, 441 U.S. 418, 422 (1979).

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The procedures that an administrative body uses to determine the facts of a case are just as important as the validity of the substantive rule of law to be applied to those facts. This is because procedures can minimize the risk of a substantively unfair or mistaken deprivation. *Carey v. Piphus*, 435 U.S. 247, 259-60 (1978). As such, it is no surprise that the United States Supreme Court requires that the standard of proof be calibrated in advance of a hearing. *Santosky v. Kramer*, 455 U.S. 745, 757 (1982).

Here, at a minimum the committee should have set out a cognizable legal standard of proof (i.e., preponderance of the evidence). It is undisputed that the licensing hearing that the Establishment was subjected to did not have an established legal standard of proof. As such, the resulting recommendations cannot be said to have been in accordance with law. On this ground alone, it would be apt for the Common Council to set aside the recommendations of the committee or at the very least send the matter back with instructions that an established standard of prove be calibrated and applied to its proceedings.

Second, the committee's decision was not based on credible or reliable evidence. For example, though the committee's report states that its recommendation is based on aldermanic testimony, there was no aldermanic testimony. In fact, all the Alderman of the district testified to was that he felt the "incidents [in the police report] are concerning because they involve a high level of intoxication that appears to a high level of violence." This cannot reasonably be categorized as "testimony". At best, it is an opinion based on hearsay reports. This statement presents no facts that a deliberative body can base its decision upon, legally.

Third, the committee's recommendation is based solely on uncorroborated hearsay. In Wisconsin, uncorroborated hearsay evidence alone cannot constitute substantial evidence. *See Gebin v. Wisconsin Grp. Ins. Bd.*, 2005 WI 16, ¶ 8, 278 Wis. 2d 111, 118. At the licensing hearing, there were no neighbors to testify in opposition to the Establishment's license. There were 4 incident reports on the police reports. These incidents were refuted by sworn testimony of the Establishment's manager. As the record stands, it cannot legally support any punitive action against the license.

Fourth, the committee's recommendation does not *specifically* state the provision of law that the Establishment has violated or qualification standards under Chapters 85, 90 and 108 of the Milwaukee Code of Ordinances or Chapter 125 of the Wisconsin Statutes. The report states that the licensee has not met the criteria of broad ordinance chapters and State statute but fails to spell out what specific criteria was not met.

Lastly, based on the totality of credible evidence received, it cannot be reasonably said that the Establishment has violated any applicable objective standards. The incident reports were minimal, covered a two-week span in July 2021 (during the Milwaukee Buck's historic playoff run), and did not involve any wrongdoing on the part of the Establishment. There is simply no basis for a 10-day suspension.

We ask that you take into consideration that the Establishment does not have any neighborhood complaints. Suspension of a license should result from a pattern of violent or other criminal activity and excessive use of police resources in relation to number of customers the license hosts each year. This is simply not a nuisance tavern and should not be punished at this time.

In conclusion, a 10-day suspension is unwarranted especially for an Establishment with a positive history and lack of any prior operational issues. As such, we respectfully request that the Common Council reverse the committee's decision and renew the Establishment's licenses without a suspension.

Very Truly Yours,

**OVB Law & Consulting, S.C.**

*/s/*

Emil Ovbiagele, JD, MBA  
*Attorney*

OEO/lb

enclosures

cc: Client  
stasst5@milwaukee.gov

In the matter of the Class B Tavern and Public Entertainment Licenses of Walkers Lounge & Events LLC for the Premises located at 626 South 5<sup>th</sup> St. in the City and County of Milwaukee

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### **OBJECTIONS TO LICENSES COMMITTEE RECOMMENDATION**

On January 25, 2022, Felipe Martinez, Jr. as agent for Walkers Lounge & Events LLC ("Applicant") along with Attorney Christopher M. Hayden appeared virtually before the Licenses Committee to seek renewal of the Applicant's Class B Tavern and Public Entertainment Premises licenses. At the conclusion of the hearing, by a vote of four ayes and zero noes, the committee voted to recommend renewal with a ten (10) day suspension. As of the date and time of this submission, the committee has failed to issue its Findings of Fact and Conclusions of Law. Additionally, the committee has failed to publish minutes of the January 25, 2022 hearing. The Applicant objects to the committee's recommendation, including the renewal with a ten (10) day suspension, for the following reasons:

1. The business seeking renewal of its Class B Tavern and Public Entertainment Premises licenses is located at 626 South 5th Street, Milwaukee, Wisconsin 53204.
2. The Applicant through counsel provided testimony that the Applicant has a history of cooperation with the Milwaukee Police Department for any investigations related to the business and addressed the four incidents contained in the MPD police report.

3. The first incident occurred on January 29, 2021, wherein the Milwaukee Police Department along with an Environmental Health Specialist conducted a license premise check on the premises and observed patrons not practicing social distancing. The police report states that no citations were found regarding the incident. The Applicant through counsel explained that any issues related to the social distancing issue have been resolved with the City of Milwaukee.

4. The second incident occurred on June 9, 2021, where police observed a large crowd and approximately 80 vehicles blocking traffic on 5th Street. The Applicant through counsel explained that the traffic issues were a combination of a busy night at the business coupled with substantial construction in the area.

5. The third incident occurred on June 16, 2021, where police were dispatched for a shots fired complaint. The police report indicated there was no evidence of shots being fired inside the business.

6. The fourth incident occurred on October 5, 2021, where a patron was struck by a stray bullet from further up the street following a road rage incident. There was no allegations that the individual that fired the weapon had any connection to the business.

7. Alderman Jose Perez was the only individual that presented testimony in opposition to the Applicant's renewal application.

8. Alderman Perez asked the Applicant questions regarding the management of the business and expressed concerns related to the business using promoters and employees parking at a neighboring church.



9. Alderman Perez expressed concerns about traffic, crowd control, reports of uncooperative managers, and shots being fired in the neighborhood even though the police reports expressly state that there is no evidence of gunfire connected with the establishment.

10. In addressing Alderman Perez's concerns the Applicant provided testimony about the measures it has taken to reduce including, but not limited to, placing three security guards outside the business to move traffic along. The Applicant explained that it does not allow the establishment to reach capacity. Specifically, the business does not allow more than 300 patrons inside despite having a capacity of 364. The Applicant through counsel also provided testimony that the manager that was described as uncooperative by MPD was reprimanded for her actions.

11. Other than Alderman Perez, there was no neighborhood testimony presented in opposition to the Applicants request for renewal.

12. Alderman Perez provided no recommendation as to whether the committee should recommend any type of progressive discipline.

13. In closing, the Applicant provided testimony as to its security measures it has adopted to prevent future incidents. Specifically, the Applicant explained that it has eight (8) cameras in and around the premises, maintains a minimum of four (4) security guards, utilizes ID scanners, and uses metal detectors when allowing patrons into the establishment.

14. The Applicant argued that renewal was warranted based on the fact that the issues identified in the police reports had either been addressed or did not involve

the premises at all. The Applicant urged the committee for renewal or, in the alternative, renewal with a warning letter to allow the business to continue operations.

15. In committee, Alderman Kovac expressed concerns for what he identified as a lack of proactive reporting for the June 9, 2021 incident.

16. Alderman Kovac ignored the Applicant's request for renewal or renewal with a warning letter and ultimately moved for renewal with a ten (10) day suspension based on the police reports.

17. Alderman Kovac's motion passed 4 to 0.

18. The recommendation of a ten (10) day suspension was not supported by the aldermanic testimony presented, which did not include any recommendation as to progressive discipline.

19. A ten (10) day suspension was not warranted based on the police reports, which expressly showed that there was no evidence of gunfire involving the business.

20. The committee's failure to issue its Findings of Fact and Conclusions of Law prior to the Applicant's deadline to file its written objections thereto is contrary to MCO 85-5, which expressly requires the committee to prepare and serve a report and recommendation upon the applicant.

21. The committee's failure to issue its Findings of Fact and Conclusions of Law prior to the Applicant's deadline to file its written objections is a failure to act according to law in violation of the Applicant's due process rights.



22. The decision to recommend a ten (10) day suspension was arbitrary, oppressive, and unreasonable in that it was not supported by any testimony on the record.

23. The decision to recommend a ten (10) day suspension was arbitrary, oppressive, and unreasonable in that it is inconsistent with committee's past decisions and preference for imposing progressive discipline.

24. Based on the police reports and the testimony presented, an appropriate outcome would have been renewal or renewal with a warning letter.

Walkers Lounge & Events LLC requests an opportunity to be heard at the Common Council meeting on February 8, 2022.

Dated this 2nd day of February, 2022.

GIMBEL, REILLY GUERIN & BROWN LLP

By: \_\_\_\_\_

  
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