

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

January 12, 2023

To the Honorable, the Common Council

Honorable Members:

Re: Common Council File Number 221335

Attached are written objections to file number 221335, Motion relating to the recommendations of the Licenses Committee relative to licenses, relating to a recommendation of:

Nonrenewal of the Extended Hours Establishments license based on neighborhood and aldermanic testimony for Lakhbir Singh, for the premises located at 4302 W Capitol Dr. ("Capitol Citgo Mart") in the 7th aldermanic district.

Reaffirmation of the Common Council's decision from November 1, 2022:

Nonrenewal of the Class B Tavern and Public Entertainment Premises licenses based on the police report, applicant, police department and aldermanic testimony for Tanisha Kelly, for the premises located at 3621 N Teutonia Av. ("Penthouse Lounge") in the 6th aldermanic district.

This matter will be heard by the full Council at its Tuesday, January 17, 2023 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 221335



Melendez, Yadira

From: robert webb <rwebblaw@gmail.com>
Sent: Wednesday, January 11, 2023 12:49 PM
To: Owczarski, Jim; Melendez, Yadira; Tanisha Kelly
Subject: Penthouse LLC Objection - January 6, 2023
Attachments: Penthouse LLC Objections 2.pdf

City of Milwaukee -

Please find my client's objection to the License Council January 6, 2023 vote.

I will not be in attendance on January 17, 2023 to provide our objection orally.

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January 11, 2023

City of Milwaukee Common Council
C/O Jim Owczarski – City Clerk
200 E. Wells Street
Rm 205
Milwaukee, WI 53202

Re: Written Objection to Licenses Committee Report of the Renewal Application of the Class "B" Traven and Public Entertainment Premises (PEP) Licenses of Tanisha Kelly, Agent for Penthouse LLC, for the premises located at 3621 N. Teutonia Avenue in the City of County of Milwaukee, Wisconsin ("Penthouse Lounge").

WRITTEN OBJECTION

I am retained counsel on behalf of "Penthouse Lounge" and its' agent Tanisha Kelly. Counsel may also hire separate counsel as the proceedings require legal action in Milwaukee County Circuit court. I am filing this written objection to the Licenses Committee's reaffirmation of its' recommendation that the Class "B" Traven and Public Entertainment Premises (PEP) non-renewal.

Pursuant to Judge's Ashely's order this matter was held before the Licenses Committee to permit myself to supplement the record and provide my client's proposal. The committee permitted my client to present her oral proposal. Additionally, my client presented her testimony related to those allegations that she contested and she took responsibility for her management.

The License committee again relied upon six allegations from law enforcement and DNS personnel to form the basis at the hearing. For the purposes of this objection counsel relies upon our October 26, 2022 written objection 5A – 5G. and the position in this written objection. Counsel does not waive any claim to respond to the citizen opposition.

PREMISE OF NON-RENEWAL

Alderwoman Coggs prior to voting to re-affirm her position to non-renew Penthouse Lounge indicated "taking responsibility for some but not all allegations, not terminating the business manager or not providing a long-term solution to management did not provide confidence in Penthouse's management."



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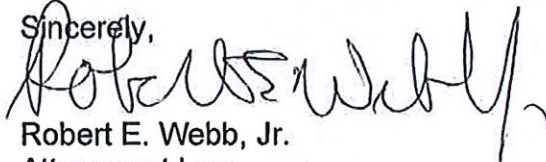
PENTHOUSE LOUNGE RESPONSE

Penthouse Lounge disagrees with the assertion that our proposal to the October 18, 2022 - notice of allegations is inadequate. Instead, we contend that Ms. Kelly's acknowledgement of the violations and management issues are being addressed. Ms. Kelly stated with the reduction of operations – she will be present more to limit the issues noted in the citations. Ms. Kelly provided her commitment to make the necessary changes. Again, Penthouse asserts the October 18, 2022, notice of allegations do not warrant a non-renewal. The allegations are not of the type that require such a response to close Penthouse Lounge LLC.

Instead, Penthouse Lounge offered a ten (10) suspension, amend its' renewal application to operate Tuesday – Saturday and reduce hours of operation by 2 hours. The end result; is a substantial reduction of revenue for a nascent business. Additionally, it will address the communities' concerns presented in October. However, it is quite apparent no combinations of proposed sanctions from Penthouse would have remedied the outcome. As an entity, corporate climate and culture changes from the leadership and Ms. Kelly expressed her responsibility and willingness to address past and future challenges.

Therefore, Penthouse Lounge requests that the entire Common Council renew its' Class "B" Tavern and PEP Licenses as we proposed.

Sincerely,



Robert E. Webb, Jr.
Attorney at Law

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cc: Penthouse Lounge
Tanisha Kelly



LAW & CONSULTING, S.C.

January 10, 2023

Emil Ovbiagele
emil@ovblaw.com

[via Email Only]

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

RE: SEHRA SONS, LLC dba "Capitol Citgo Mart"
4302 W Capitol Dr., Milwaukee, WI
License Renewal- Objections to Committee's Findings

Dear Mr. Owczarski,

As it relates to the above-referenced matter, please be advised that that this Firm represents SEHRA SONS LLC d/b/a "Capitol Citgo Mart" which operates a gas station at 4302 W Capitol Dr., Milwaukee, WI (the "Establishment").

We write to formally object to the Milwaukee Licensing Committee's January 4, 2023 recommendation to not renew the Establishment's Extended Hours license (the "Recommendation"). We request to be heard at the next Milwaukee Common council hearing scheduled for January 17, 2023.

It is my client's position that the Recommendation should not be adopted by the Common Council for several reasons. The Recommendation was arrived at by the Licensing Committee against a process that failed to comply with Due Process requirements of law, and it was arbitrary, capricious and not supported by any 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).

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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).

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 Recommendation. Adopting the Committee’s Recommendation under such circumstances will amount to a violation of my client’s procedural due process rights.

Second, considering the findings of facts and the basis for the Recommendation, the notice provided to my client runs afoul of due process and the City’s own ordinance. Under MCO 85-3.1.a, the City is required to not only provide a “written notice of the possibility of non[]renewal” but the notice itself must include, among other things, “[a] statement of **specific reasons**” for potential nonrenewal.

The notice the City provided to my client is a form letter sent to virtually every licensee in the City. The notice only included a summary laundry list of all applicable considerations that the Committee may consider. It is far from specific, as required by the City’s ordinance. It is merely a formulaic recitation of all potential factors the Committee could consider. This is neither what the ordinance requires nor what due process calls for. *See Fam. Dollar Stores of Wisconsin LLC v. City of Milwaukee*, 2022 WI App 57, ¶¶ 26-30. The deleterious effect of the ineffective notice served as the backdrop for the erroneous Recommendation. There was no specific notice that the City intended for nonrenewal of the Establishment’s Extended Hours license. Nothing in the notice referenced the Establishment as specifically running afoul of any requirements that would have subjected it to nonrenewal of its Extended Hours license. There was no indication that the few item incidents included in the attached police report occurred during the Establishment’s extended hours. The notice, with the attachments, does not constitute sufficient notice under the circumstances.

These two reasons, individually, are sufficient for the Common Council to set aside the Recommendation. But additional reasons counsel against adopting the Committee’s Recommendation. 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 “agrees with the neighbors’ testimony” and that “extended hours establishments have been an issue everywhere”. This cannot reasonably be categorized as “testimony”. At best, it is a generalized opinion and statement of preference that has nothing to do with my client’s

Establishment. It goes without being said, but every recommendation must be made on the particularized facts and circumstances of each establishment that comes before the Committee.

Next, turning to the neighborhood testimony that the Committee received, it becomes even more evident that the Recommendation was not based on any scintilla of credible evidence. Two individuals testified in opposition and three individuals testified in support of renewal of the Extended Hours license. The two individuals who testified in opposition did not provide even a shred of evidence that the Establishment possesses any issues during the extended hours. Both individuals expressed generalized opposition to businesses that operated during extended hours. But they did not testify as to any wrongdoing on my client's part. The items read into the record from the police report did not involve any occurrences during the extended hours. On the other hand, there were three neighbors who testified to the fact that the Establishment does not pose any issues during its extended hours. And at least one witness testified as to the utility of having the Establishment operational during extended hours. On this record, there is simply no basis to justify any sort of adverse action against the Establishment's Extended Hours license.

Lastly, 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.

Further, we ask that the Common Council take into consideration that the Establishment has operated for the last 15 years without any adverse action to any of its licenses and has always cooperated with law enforcement. The current record cannot support a suspension of the Extended Hours license, more less an outright revocation. As such, we humbly request that the Common Council set aside the Recommendation of nonrenewal of the Establishment's Extended Hours license and renew the license without any adverse action.

Very Truly Yours,

OVB Law & Consulting, S.C.

/s/

Emil Ovbiagele, JD, MBA
Attorney

OEO/*ab*

cc: Client
stasst5@milwaukee.gov