

**CHAIR**

• Licenses Committee

**MEMBER**

• Community and Economic  
Development Committee  
• Steering and Rules Committee



**TONY ZIELINSKI**  
ALDERMAN, 14TH DISTRICT

July 17, 2014

To the Honorable, the Common Council

Dear Members:

Re: Common Council File Number 140189

Attached are written objections to file number 140189, Motion relating to the recommendations of the Licenses Committee relative to licenses, relating to a recommendation of a thirty (30) day suspension of the Class "B" Tavern and Public Entertainment Premises licenses for Joseph Kuntz, agent for The Chalk House MKE, LLC for the premises located at 1137 N Old World Third St ("The Loaded Slate MKE") in the 4th aldermanic district.

This matter will be heard by the full Council at its Tuesday, July 22, 2014 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,

A handwritten signature in black ink that reads "Tony Zielinski". The signature is written in a cursive, flowing style.

Tony Zielinski, Chair  
Licenses Committee

cc: All Council Members  
City Attorney's Office  
Common Council/City Clerk – License Division  
CCF 140189



# WHITCOMB LAW

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July 16, 2014

The Honorable Common Council  
of the City of Milwaukee  
Room 205, City Hall  
200 E. Wells Street  
Milwaukee, WI 53202

Re: Renewal of Class "B" Tavern, and Public Entertainment Premises Licenses

Licensee: The Chalk House MKE, LLC

Premises: 1137 N. Old World 3rd St

Trade Name: The Loaded Slate

Honorable Members of the Common Council:

Please be informed that this office represents the above-referenced license renewal applicant. This communication is submitted as the applicant's written objections to the July 11, 2014, Report of the Licenses Committee (hereinafter "Committee"), recommending to suspend the licenses for a period of thirty days. The applicant requests that these written objections be considered at the Common Council meeting of Tuesday, July 22, 2014, at which time the Committee's recommendations regarding the license renewals will be considered. The recommendation of the Committee was based upon comparatively minor incidents contained in a report of the Milwaukee Police Department, and the testimony of one neighbor, who was concerned about noise, but could not state with certainty that the noise was attributable to the licensee.

The licensee objects to the accuracy of the Findings of Fact contained in the Report. Items 5A-5C in the Report describing police contacts that were considered at a previous hearing for a prior license period and were not discussed at the July 8, 2014 Committee hearing. These items are not part of the record and cannot be considered by the Common Council.

Further, the other police contacts listed in the Findings of Fact do not support this excessive punishment of the licenses. Rather, they reveal proper tavern management as the licensee took appropriate and commendable action to mitigate the cited issues.

On July 28, 2013, tavern security removed two patrons who were arguing. The disagreement continued outside of the tavern, while the owners and staff attempted to resolve the situation by threatening police involvement. One individual walked away and returned with a hammer, whereby the confrontation moved more than a half-block away. Staff did not further intervene because of the presence of a weapon. Police arrived on the scene soon after yet before tavern staff could call for assistance. Tavern staff were cooperative with police. This is proper tavern management—their actions should be commended, not punished.

On May 3, 2014, a police aide, in an area-wide sting operation, was able to sneak into the tavern during its transition from food to bar service. During this period, a waitress, who was assisting behind the bar, believed the individual already proved her age and sold the aide a beer. Numerous other well respected licensees in the area were deceived by the actions of this operation and received citations. This matter is currently being litigated in municipal court as the licensee believes Wisconsin law provides an absolute defense to the citations it received for this incident.

On September 13, 2013, an officer believed the tavern may be over capacity and that underage patrons might be in the premise. The officer did not count the number of patrons, nor did the officer confirm the presence of any underage patrons. The bartender that poured liquor directly into the mouth of a patron was reprimanded and retrained. There is no evidence that this incident warrants punishment of the licenses.

On September 20, 2013, the tavern unknowingly became a target destination for a number of college students, many of whom had procured sophisticated false identification to gain entry. Every patron was carded by management or an owner that evening. Twenty-nine citations were issued to thirteen individuals for underage-related offenses. The licensee has not been convicted of any offense relating to this incident. These facts are much less concerning than other similarly situated licensees, including one that had close to one hundred underage patrons on the premise.

The following day, the licensee contacted this office to assist in scheduling a meeting with police so the owners and staff could learn new tips and best practices to spot new sophisticated identification cards. This meeting was extremely successful and cooperative. The police informed the licensee of their own difficulties spotting new false identification and provided additional tips to use in the future. These are the actions of a responsible tavern owner—not the actions that should be punished. The city should foster successful police-tavern relationships instead of punishing them.

Many of these false identification cards cannot be spotted by police unless the officer looks up biographical information in police records, which was described at the Committee hearing. How can a tavern owner be punished for failing to do what even the police have significant difficulties doing?

Under Wisconsin law, if a tavern takes the appropriate steps to verify a patron's age, it has an **absolute defense** against being cited for related offenses. In this circumstance, the licensee qualified for this safe harbor. Rather than litigate the citation to determine if the defense was available by law, the licensee and city agreed to dismiss the citation in May, 2015 if the licensee is not convicted of another related offense. Again, the licensee has not been convicted in this license period of any offense related to its licenses.

Finally, the Committee heard testimony from a neighbor and the concerns from the local alderperson regarding noise emanating from the bar. The witness **could not** verify nor confirm that the bothersome noise she experienced came from the licensee's establishment. The tavern resides in a vibrant entertainment district where excessive noise could arise from a number of other locations.

The licensee has made numerous attempts to contact the management company of the neighboring residence to determine whether its residents had any concerns about the tavern. The management company has provided little to no communication to the licensee with regard to resident concerns and the licensee has had no notice that it may be creating bothersome noise. Had the licensee known about any complaints, it would have made every effort to rectify the situation or determine if the noise emanated from another location. To ensure that the licensee is not the cause of the noise, the tavern owners provided the neighbor with their mobile phone numbers so she may contact them if she hears it again.

The neighboring residence is entirely full with over 200 residents. If the tavern was producing bothersome noise, surely other residents would have complained and the management company and project developer would have voiced their own concerns to the licensee, local alderperson or the Committee. There is no record of any other complaints regarding noise.

The thirty-day suspension of the licenses for these reasons is severe, excessive and unprecedented punishment based upon the little evidence presented to the Committee. The licensee has not been convicted of **any** offenses relating to its licensees, nor was there any testimony of certainty that the licensee causes excessive noise. Under Wisconsin law, no punishment is appropriate based upon the testimony and evidence presented to the Committee.

The licensee has ran a successful restaurant and tavern for the past four years. The police report and testimony do not support a suspension. Adhering to the Committee's policy of progressive discipline, a warning letter or 10-day suspension is the appropriate punishment.

The licensee hereby respectfully requests the following relief:

1. Vote not to accept the recommendation of the Licenses Committee and grant renewal of the licenses with a written warning; or
2. Vote not to accept the recommendation of the Licenses Committee and grant renewal of the licenses with a 10-day suspension

Thank you for your consideration.

Sincerely,

/s/

Michael J. Whitcomb

c: The Chalk House MKE, LLC