



**CITY OF MILWAUKEE
OFFICE OF THE CITY CLERK**

Friday, September 11, 2015

COMMITTEE MEETING NOTICE

AD 04

SMITH, Robert F, Agent
Boardroom Entertainment Mke, LLC
730 N Old World Third St

Milwaukee, WI 53203

You are requested to attend a hearing which is to be held in Room 301-B, Third Floor, City Hall on:

Thursday, September 17, 2015 at 01:00 PM

Regarding: Your Class B Tavern and Public Entertainment License Renewal Applications, Adding Adult Entertainment, Strippers, Erotic Dancing, Patrons Dancing, and Dancing by Performers as agent for "Boardroom Entertainment Mke, LLC" for "Rusty's Old 50 " at 730 N Old World Third St.

There is a possibility that your application may be denied for one or more of the following reasons: The recommendation of the committee regarding the application shall be based on evidence presented at the hearing. Per MCO 85-4-4, unless otherwise specified in the code, probative evidence concerning non-renewal, suspension or revocation may include evidence of the following: failure of the applicant to meet municipal qualifications, pending charges against or the conviction of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the circumstances of the particular licensed or permitted activity, by the applicant or by any employee or other agent of the applicant. If the activities of the applicant involve a licensed premises, whether the premises tends to facilitate a public or private nuisance or has been the source of congregations of persons which have resulted in any of the following: disturbance of the peace; illegal drug activity; public drunkenness; drinking in public; harassment of passers-by; gambling; prostitution; sale of stolen goods; public urination; theft; assaults; battery; acts of vandalism including graffiti, excessive littering, loitering, illegal parking, loud noise at times when the licensed premise is open for business; traffic violations; curfew violations; lewd conduct; display of materials harmful to minors, pursuant to s. 106-9.6; or any other factor which reasonably relates to the public health, safety and welfare, or failure to comply with the approved plan of operation. See attached police report or correspondence.

**Notice for applicants with
warrants or unpaid fines:**

Proof of warrant satisfaction or payment of fines must be submitted at the hearing on the above date and time. Failure to comply with this requirement may result in a delay of the granting/denial of your application.

Failure to appear at this meeting may result in the denial of your license. Individual applicants must appear only in person or by an attorney. Corporate or Limited Liability applicants must appear only by the agent designated on the application or by an attorney. Partnership applicants must appear by a partner listed on the application or by an attorney. If you wish to do so and at your own expense, you may be accompanied by an attorney of your choosing to represent you at this hearing.

You will be given an opportunity to speak on behalf of the application and to respond and challenge any charges or reasons given for the denial. No petitions can be accepted by the committee, unless the people who signed the petition are present at the committee hearing and willing to testify. You may present witnesses under oath and you may also confront and cross-examine opposing witnesses under oath. If you have difficulty with the English language, you should bring an interpreter with you, at your expense, so that you can answer questions and participate in your hearing.

You may examine the application file at this office during regular business hours prior to the hearing date. Inquiries regarding this matter may be directed to the person whose signature appears below.

Limited parking for persons attending meetings in City Hall is available at reduced rates (5 hour limit) at the Milwaukee Center on the southwest corner of East Kilbourn and North Water Street. Parking tickets must be validated in the first floor information booth in City Hall.

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request this service, contact the Council Services Division ADA Coordinator at (414) 286-2998, Fax - (414) 286-3456, TDD - (414) 286-2025.

JIM OW CZARSKI, CITY CLERK

BY: _____

Jason Schunk
License Division Manager

If you have questions regarding this notice, please contact the License Division at (414) 286-2238.

200 E. Wells Street, Room 105, City Hall, Milwaukee, WI 53202. www.milwaukee.gov/license
Phone: (414) 286-2238 Fax: (414) 286-3057 Email Address: License@milwaukee.gov

MILWAUKEE POLICE DEPARTMENT
LICENSE INVESTIGATION UNIT

CRIMINAL RECORD/ORDINANCE VIOLATION/INCIDENTS
SYNOPSIS

DATE: 09/02/2015
LICENSE TYPE: BTAVN
NEW:
RENEWAL: X

No. 217161
Application Date: 09/01/2015
Expiration Date:

License Location: 730 N Old World Third Street
Business Name: Boardroom Entertainment

Aldermanic District:

Licensee/Applicant: SMITH, Robert F
(Last Name, First Name, MI)
Date of Birth: 12/06/1968

Home Address: 212 E Mineral St
City: Milwaukee
Home Phone: (414) 649-9999

State: WI **Zip Code:** 53204

This report is written by Police Officer Gilbert Gwinn, assigned to the License Investigation Unit, Days.

The Milwaukee Police Department's investigation regarding this application revealed the following:

1. On 10/24/2004 at 2:15 AM the applicant was cited for Disorderly Premises Prohibited at 906 S Barclay St. No further information.

Charge : Disorderly Premises Prohibited
Finding : Guilty, Municipal Court
Sentence : Fined \$354.00
Date : 12/14/2004
Case : 04126492

2. On 06/13/08 at 11:24 pm, Milwaukee police observed a large crowd at Club Rain waiting to enter the club. Police spoke to a security guard who stated there was going to be problems because of the long line of patrons waiting to enter the club. Police observed about 70 patrons around the block waiting to enter the club. Police made several attempts to disperse the crowd with patrons becoming angry. One subject became unruly and was taken into custody. Due to the amount of people and the crowd becoming unruly, more squads were requested. Officers later spoke to Patsy Smith who stated they couldn't allow any more patrons in due to capacity. Citations were issued to Robert Smith, the licensee, for Disorderly Premises and Licensing-Change in Entertainment. A meeting was suggested to Smith to discuss recent incidents before something serious occurred. On 06/25/08 Smith went to District # 2 to discuss the concerns of Club Rain with district officers. Robert Smith was unable to attend however did contact officers later that day.

Charge: Change in Entertainment Notice Required
Disorderly Premises
Finding: Guilty
Dismissed w/o prejudice
Sentence: Fined \$100.00
Date: 10/03/08
Case: 08081739
08081738

3. On 09/17/2004 the applicant was cited in the city of Milwaukee for B & Z Violations at 906 South Barclay Street.

Charge: B & Z Violations
Finding: Guilty
Sentence: \$220.00 fine
Date: 07/05/2005
Case: 04125787

4. On 09/18/2007 the applicant was cited in the city of Milwaukee for Building Code Violations at 212 East Mineral Street.

Charge: Building Code Violations
Finding: Guilty
Sentence: \$300.00 fine
Date: 10/08/2009
Case: 09018901

5. On 08/15/2008 the applicant was cited in the city of Milwaukee for Building Code Violations at 906 South Barclay Street.

Charge: Building Code Violations
Finding: Guilty
Sentence: \$580.00 fine
Date: 07/21/2009
Case: 09008677

6. On 11/22/2008 at 12:40am Milwaukee Police were dispatched to a fight at 906 South Barclay Street (Rain Night Club). Investigation revealed a fight had occurred between patrons inside the bar. The applicant was on scene at the time this incident occurred and was issued three citations:

Charge 1: Presence of Minor at Licensed Premises (two counts)
2: Disorderly Premises Prohibited
Finding 1: Guilty
2&3 Dismissed without prejudice
Sentence : \$250.00 fine
Date : 08/31/2009
Case 08153636/08153638/08153637

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7. On 03/03/12 at 1:00 am, Milwaukee police conducted a License Premise Check at 730 N Old World Third Street. Investigation found numerous underage patrons inside the bar who were trying to leave the establishment. Officers confirmed 72 underage patrons and who were not with any parent or guardian. Police spoke with Robert F Smith, the licensee, who had no explanation for the large number of underage patrons inside his tavern. A total of 60 citations were issued for Possession/Consumption of Alcohol 17-20, 10 citations for Presence of Underage/Minor, 5 for Misrepresenting Age, and 4 for Obstructing Issuance of Citation. Police were on scene for 3 hours and had to ask the bar staff several times to stop serving while police were investigating.
8. On 03/16/12 at 4:30 pm, members from District one and the License Investigation Unit met with Robert Smith and his attorney, Vincent Bobot in regards to large amounts of patrons who were underage and found inside 730 N OWT Street, Boardroom. An investigation found that 72 citations were issued one night with many of the ID's from out of state. Mr. Smith stated he was embarrassed by this incident and provided suggestions of improvements that included using an ID scanner, changing cameras and using a height measurement to check against ID information. Mr. Smith also provided a typed security measure plan and a suggestion was made that Smith should required a Wisconsin state ID, as most students need to change their addresses to a local one in order to vote. Police personnel provided other suggestions to Smith and advised him that if problems persist, uncover surveillance would be conducted.

9. On 11/24/12 at 1:36 am, Milwaukee police were dispatched to 730 N. Old World Third Street for an Underage Persons complaint. Upon arrival, officers were posted at the entry door and the rear door to ensure that no one would exit from the rear door. Investigation found eight patrons who were underage and also found that the bar's license had not been posted, only an invoice. No licensed manager was on scene. All underage patrons were cited and released.

10. On 03/03/2012 the applicant was cited at 730 North Old World Third Street in the city of Milwaukee for Presence of Minor at Licensed Premises.

Charge: Presence of Minor at Licensed Premises
Finding: Guilty
Sentence: \$1000.00 fine
Date: 07/16/2012
Case: 12046417

11. On 01/14/2015 Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). Several violations were observed and discussed with the applicant. These included not having the certificate of occupancy or food dealers license posted, and not having an ID scanner at the location. The applicant told the officers he was in the process of changing the listed agent for the business but would not elaborate.

12. On 01/21/2015 at 10:42pm, Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). Officers observed several young ladies inside the business that identified themselves as independent contractors that danced at the bar, but received only tips as compensation. Some of the dancers wore see through garments, thong underwear and "pasties". The applicant, Robert Smith, along with Radomir Buzdum and Timothy Miller were on scene. Buzdum told officers he had been informed by his attorney that the dancing was allowed because the dancers were independent contractors and not employees of the business. The applicant stated the women were wearing clothing similar to other women that attend clubs in Milwaukee. Miller stated he was asked by Radomir Buzdum to help at this location. Miller is a general manager at TNT Gentleman's club in Watertown.
13. On 01/22/2015 at 10:53pm, Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). Upon entering officers observed a female dancing on a stage wearing a dress with horizontal slits on both sides. The dancer had her dress pulled below her breasts which were covered with pasties. Upon observing the police the dancer pulled her dress up. Officers also observed several other young ladies inside the business that identified themselves as dancers at the bar. These dancers were observed wearing various articles of underwear and bras and/or "pasties". Officers located a room off the kitchen that was being used by the dancers as a dressing room, which was equipped with lockers. The applicant, Robert Smith along with Radomir Buzdum and Timothy Miller, were on scene. All three received citations for violations observed on 01/22/2015 as well as citations for violations observed the previous night (01/21/2015). On 01/23/2015, at 1:50am, Milwaukee police conducted follow up at 730 North Old World Third Street (Rusty's). The follow-up was regarding a female who had provided false identification during an interview. The subject had initially identified herself as Quiana Monre, but later told officers her real name was Azaria Wilder. During this encounter, officers observed a young lady dancing on a stage near the entrance wearing only underwear and high heels. The dancer had her breast exposed without pasties. The dancer got off the stage and ran to the back of the location.

As to the applicant:

Charge	1:	Public Entertainment Premises License Required
	2:	Public Entertainment Premises License required (violation date 01/21/2015)
Finding	1:	Not guilty
	2:	Not guilty
Sentence	:	
Date	:	08/24/2015
Case	:	15007754
	:	15007755

As to Radomir Buzdum:

Charge	1:	Public Entertainment Premises License Required
	2:	Public Entertainment Premises License required (violation date 01/21/2015)
Finding	1:	Dismissed without prejudice
	2:	Dismissed without prejudice
Sentence	:	
Date	:	06/04/2015
Case	1:	15007744
	2:	15007745

As to Timothy Miller:

Charge	1:	Public Entertainment Premises License Required
	2:	Public Entertainment Premises License required (violation date 01/21/2015)
Finding	1:	Dismissed without prejudice
	2:	Dismissed without prejudice
Sentence	:	
Date	:	06/04/2015
Case	1:	15007751
	2:	15007750

14. On 01/24/2015 Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). Officers observed that the stage with a vertical pole that had been in the southwest corner of the business, had been removed. No dancing was observed. Two females were observed wearing bikini type outfits with the rest of the females dressed in normal casual clothing.
15. On 01/24/2015 Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). During this check, several people admitted to officers that they smoked in the basement of the business. All females inside the business were wearing "club" type clothing (skirts, shorts, cropped shirts and bikini tops).
16. On 01/25/2015 a Milwaukee police officer filed a PA33 regarding a conversation he had with Radomir Buzdum on 01/21/2015. During this conversation, Buzdum told the officer that he has dealt with other municipalities regarding licensed premises throughout the state. Buzdum stated that he has sued other communities over the adult entertainment license and every time he and the city have compromised or reached a settlement. He explained that he would sue for a large sum of money and ask for full nudity. In an effort to resolve the lawsuit, the municipality would counter with a requirement of bikini tops and bottoms and ultimately they would settle for "pasties" on top and thongs on the bottom. Buzdum said it was a revolving cycle and this was just the way he would have to play it.
17. On 04/19/2015 Milwaukee police responded to 730 North Old World Third Street (Rusty's Old 50) for a loud music complaint. Officers observed approximately 10 patrons inside the business which appeared to operating as a normal tavern.

Business Name: Boardroom Entertainment MKE, LLC
Address of Licensed Premises: 730 N. Old World Third Street
Business Phone: 414-350-6463 Type of License: Btavern

☐ Violation / ☒ Incident # Tavern Check

Licensee or Manager on premises at time of violation / incident? ☒ Yes ☐ No

Licensee cooperative? ☒ Yes ☐ No (if no, explain in narrative section)

Time: 2242

Date of Birth: 12/06/1968
Home Phone: 414-350-6463

Date of Birth:
Home Phone:

Date of Birth: 08/25/1976
Home Phone: 262-501-8874

Date of Birth:
Home Phone:

VIOLATION/INCIDENT – DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Court Date:

Court Date:

Court Date:

Court Date:

Court Date:

Date: 01/22/15

Date _____

DISPOSITION – FOR LICENSING ONLY

[illegible]

This report is being submitted by PO Xavier BENITEZ assigned to District 1, Power Shift. On Wednesday January 21, 2015 at 10:42pm, a license premise check was conducted by police officers at 730 N. Old World Third St (Boardroom Entertainment MKE) the officer's on scene were Sgt. Davis LIGAS (sq 1413), PO Raymond BOGUST, PO Alberto FIGUEROA (sq 1460), PO Corstan COURT, and myself (sq 1440).

Upon entering the establishment I observed a black female, later identified as Cherrelle C. ANDERSON (f/b 05-02-88 of 4368 N. 28th St ph# 254-3876) dancing on a stage, wearing a red see through lingerie garment, with black thong underwear, and black "pasties" covering her areolas, which could be observed through the lingerie I observed a white male customer sitting on chair near the stage .

Premise Description

The tavern is located on the south side of a multi-family apartment building and through the main entrance/exit doors the main bar that was in use was located in the north west corner, with a bartender behind the bar working. Across the main bar, was the stage area (with a vertical pole for dancing) located at the southwest corner. I continued to walk east through the premises and observed a large back bar area not in use in the south east corner. Sitting at the bar were two white females, later identified by other officers and interviewed. I then walked to a side room on the north wall, there I observed two females, later identified as Emily L. BELLOVARY (f/w 10-18-91 of N4574 County Rd E Hustisford WI 53034 ph # 920 253-6189) and Rosetta SORRLES-JOHNSON (f/b 06-05-80 of W305N6545 Beaver RD, Hartland WI 53029 ph# 414 339-2518) BELLOVARY was observed wearing a gold colored thong and putting back on her gold glittered top back on with flesh colored "pasties" covering her areolas. SORRLES-JOHNSON was observed walking out of the room wearing a yellow trimmed top and bottom with blue/green, holding the hand of an older male white customer. In the back room I observed chairs displayed out on the perimeter of the room, and two curtained areas with a chair in the middle of each area. Continuing east along the north wall were the bathrooms. Along the southeast wall led to an employee only area. The area had the kitchen and a room designated for self employed dancers, as well as a back exit not used by customers.

Interviews

I then spoke with Cherrelle C. ANDERSON, who stated that she is employed as an independent contractor. ANDERSON stated that she is usually paid by tips from people while she is dancing. ANDERSON stated that the manager Brad hired her.

I then spoke to Emily L. BELLOVARY, who stated that she volunteered to work and works at TNT Gentleman's Club (located at N866 County Rd R Watertown WI 53098 Ph# 920-925-3222) as a self-employed dancer. BELLOVARY stated that she is usually paid in tips by dancing or if it is a slow night the manger compensates them. BELLOVARY was hired to dance by Brad the manager.

I then spoke to Stacy A. THORMAN (f/w 07-14-83 of N6975 Saucer Dr Watertown WI 53094 ph# 262 370-5997) who I observed in the back room for the dancers. THORMAN was observed wearing a black robe seated on a chair. THORMAN stated that Tim Miller of TNT hired her. THORMAN is paid to dance by tips from customers.

End of interviews.

PO COURT and PO BOGUST will file additional supplement reports regarding their part of the premise check. During the course of the premise check PO FIGUEROA was recording the investigation on a video camera, for documentation purposes.

This report is submitted by P.O. BOGUST assigned to District One, Power Shift, and squad 1460. On 01/21/15, at 10:42 PM I assisted in a tavern check at 730 N Old World 3rd ST. Upon entering the establishment I noticed several women in lingerie type clothing. I observed a white female standing at a table located half way thorough the bar along the North wall. She was wearing a white bra and multi color panties along with black high heel shoes. She was identified as JANUS, Sarah M (w/f 07/30/86) While interviewing JANUS she stated she was employed as an independent dancer and she also works at TNT in Watertown. I asked what her job was and she stated a cocktail waitress and dancer.

I proceeded to the back of the establishment in the back of the building and observed a second white female Michelle L HIGGINS, w/f 12-22-93, wearing a white bra with a leopard print skirt along with black high heels. When questioned she also stated that she's employed as an independent dancer.

The last person I interviewed was the bartender PROFFIT, Stephen T (w/m 08/25/76) when I asked to see his bartending license he stated that he didn't have one for Milwaukee, but was working under managers license

• This report is typed by P.O. Corstan D. COURT assigned to the First District - Late Power Shift. On 01-21-2015 at 10:43 pm, Squad 1440, P.O.'s COURT and Xavier BENITEZ, along with Squad's, 1413 (Sergeant David LIGAS) and Squad 1460 (P.O.'s Raymond BOGUST and Alberto FIGUEROA) performed a license premise check at 730 N. Old World Third Street (Boardroom Entertainment MKE). Upon entering the establishment (where there was no cover charge), I was met by the licensed agent, Robert F. SMITH, and another subject, Identified as Radomir BUZDUM, w/m 11-24-1959, (N9661 BOJE CT, Watertown, WI 53094, 920-248-3360) who were standing by the bar which was located in the northwest part of the building.

I interviewed BUZDUM, who stated that his sister is a co-owner of the business and he is "over-seeing" the daily operation of the tavern. I asked him about the woman who was dancing on the stage, which was located on the southeast corner of the tavern, and he said that they were all independent contractors and worked for tips alone. Since they were not employed by the business, BUZDUM said that his attorney told him that they were allowed to dance for customers. When asked about their costumes, he relayed to me that there was nothing illegal about their dress because they were wearing bikini tops, with pasties underneath, and bikini and/or skirt bottoms. BUZDUM said that he has been in close contact with his attorney about this situation and everything he is doing is in compliance with the tavern license. BUZDUM had no further information

I interviewed SMITH who stated that he is the agent, reiterated what BUZDUM said, and told me that the women inside the tavern are wearing nothing different from what you might see at the clubs in Milwaukee on a weekend night. SMITH had no further information

The tavern manager, Timothy J. MILLER, w/m 12-20-71, (N866 County Road R, Watertown, WI 53098, 920-253-6391, said that he is an employee of the establishment and is a new hire. He works as the general manager at TNT Gentleman's Club in Watertown Wisconsin and was asked by BUZDUM to help at this current location. MILLER had no further information.

I interviewed one of the dancer's, Yuliya A MAMAYEVA, w/f 02-06-89, (6103 N. Green Bay Avenue, Glendale, WI 53209, 262-888-0579) who said that she is a self-employed dancer who was hired by "Brad" (BUZDUM) to work tonight. She receives no money from the tavern and works on tips only. MAMAYEVA had no further information. At the time of the interview, she was wearing a black, blazer style, and women's jacket with a black bra underneath and black women's briefs.

Jean S. BOIS, w/f 11-23-83, (N48W28966 County Road JK, Hartland, WI 53092, 262-527-8271, was interviewed by myself and she stated that she is a self employed dancer who works on commission. She was asked by MILLER to work in the tavern tonight but did not receive any money from him. BOIS knows MILLER because she has performed at TNT Gentleman's Club where MILLER is the manager. BOIS had no further information. At the time of the interview, BOIS was wearing a black bikini top and a silver mini skirt.

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC

Address of Licensed Premises: 730 NOW 3rd St

Business Phone: 414-350-6463

Type of License: Tavern

District: 1

☐ Violation / ☒ Incident # Tavern Check

Date of Incident: 01/14/2015

Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (if no, explain in narrative section)

Licensee Notified by Officer: P.O. Robert FERRELL

Date: 01/14/2015

Time: 23:55

Licensee or Agent's Name: SMITH, Robert F

Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968

Home Phone: 414-350-6463

Co-Licensee Name: Unknown

Home Address:

Class S License Number:

Date of Birth:

Home Phone:

Bartender Name:

Home Address:

Class D License Number:

Date of Birth:

Home Phone:

Licensed Person / Public Pass. Vehicle, etc.:

Home Address:

Class D License Number:

Date of Birth:

Home Phone:

VIOLATION/INCIDENT - DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited:

Citation Number:

Violation & Ord. / Statute No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statute No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statute No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statute No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statute No.:

Date of Birth:

Court Date:

Investigating Officer: PO Robert FERRELL

District / Bureau: 14

Date: 01/14/2015

PO Robert Ferrell
Capt Leslie Thiele
 CT RD Commanding Officer

02-02-15
 Date

DISPOSITION - FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date

LICENSE INVESTIGATION UNIT

Received *2-9-15*

Referred

By *[Signature]*

This report is written by P.O. Robert FERRELL, District One, Power Shift, Sq 1430.

On Wednesday, January 14th, 2015, at approximately 23:00 Sq 1430 (P.O. Adam BRADLEY and I) performed a tavern check at 730 N. Old World 3rd St, Boardroom Entertainment MKE, LLC, accompanied by Sq 1411 (Sgt. Thomas ACKLEY), 1413 (Sgt. David LIGAS), and Sq 1440 (P.O. Corstan COURT/ P.O. Sean McCORD).

Upon entering the tavern I was met by the listed licensee Robert F SMITH, who recognized me from previous encounters. SMITH complied with my request to view all pertinent licenses, and capacity placard. Upon viewing licenses, I found all licenses related to class B tavern, with three bartender licenses posted. Missing were certificate of occupancy, and food dealers license required to run his kitchen at the tavern. I inquired about this as his application for renewal noted that 10% of his sales would be from food.

At this time SMITH told me he didn't have one and only planned on making frozen pizzas. SMITH stated that he didn't believe he needed a food dealer's license for that. I informed him that any food prepared out of the kitchen for sale, would require a food license and inspection of the kitchen from the Health department before he could operate any food sales from the tavern. SMITH informed me he thought I was wrong on this, but would check for himself, at a later time.

I inquired about the ID scanner mentioned in his application, SMITH told me it was not on scene. When asked about how he would verify age, I was told the bartenders were responsible for carding. When questioned about what type of training he would provide his employees in spotting fake/misused ID's. SMITH stated they would rely on the card reader, with no plans of additional training. SMITH also mentioned having a new financial partner, and trying to have the listed agent for the tavern changed. When asked about his new partner SMITH refused to elaborate and changed the topic, asking who the current Captain of District One was.

The tavern was only occupied by approximately 10 people who were all seated at the west bar. The overall layout of the tavern is the same as the old tavern, minus the old pick up truck in the middle of the floor. With two large bars inside one in front, one in the rear. On the north wall were sitting booths, with curtains which could be drawn shut to enclose the booth. The taverns kitchen is located in the rear of the tavern, and appeared to be operational if needed.

[illegible]

PA-33E Narrative

This report is written by P.O. James FILSINGER, assigned to Squad 1420, Late Shift

On Sunday, 04-19-15, at approximately 12:41am, Squad 1420 (P.O. James FILSINGER), Squad 1447 (P.O. Steven ROUFUS) and Squad 1410 (Sgt. Joseph HONZELKA) were dispatched to a loud music complaint at Rusty's Old 50, located at 730 N. Old World Third St.

Upon entering the tavern I was met by the listed licensee Robert F SMITH. SMITH complied with my request to view all pertinent licenses, and capacity placard. Upon viewing licenses, I found all licenses related to class B tavern, with three bartender licenses posted.

At this time SMITH stated to myself and Sgt. HONZELKA that he was only open 2-3 days a week to prevent the city from taking his license away.

The tavern was occupied by approximately 10 people who were all seated at the west bar. The establishment seemed to be operating as a normal tavern.

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC
 Address of Licensed Premises: 730 N. Old World Third Street
 Business Phone: 414-350-6463 Type of License: Btavern

District: 1

☐ Violation / ☒ Incident # Tavern Check Date of Incident: 01/21/2015
Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (if no, explain in narrative section)

Licensee Notified by Officer: P.O. Corstan D. COURT

Date: 01/21/2015

Time: 2242

Licensee or Agent's Name: SMITH, Robert F
 Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968
 Home Phone: 414-350-6463

Co-Licensee Name: Unknown
 Home Address:
 Class S License Number:

Date of Birth:
 Home Phone:

Bartender Name: PROFFIT, Stephen T
 Home Address: 904 Charles Street, Watertown, WI 53094
 Class D License Number: none

Date of Birth: 08/25/1976
 Home Phone: 262-501-8874

Licensed Person / Public Pass. Vehicle, etc.:
 Home Address:
 Class D License Number:

Date of Birth:
 Home Phone:

VIOLATION/INCIDENT – DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited:		Date of Birth:
Citation Number:	Violation & Ord. / Statue No.:	Court Date:
Name of Person Cited:		Date of Birth:
Citation Number:	Violation & Ord. / Statue No.:	Court Date:
Name of Person Cited:		Date of Birth:
Citation Number:	Violation & Ord. / Statue No.:	Court Date:
Name of Person Cited:		Date of Birth:
Citation Number:	Violation & Ord. / Statue No.:	Court Date:
Name of Person Cited:		Date of Birth:
Citation Number:	Violation & Ord. / Statue No.:	Court Date:

Investigating Officer: PO Corstan D. COURT District / Bureau: 14 Date: 01/25/2015

LT 011 *Capt Leslie Thiele* *02-02-15*
 Commanding Officer Date

DISPOSITION – FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date

ENSE INVESTIGATION UNIT
 Received *2-9-15*
 By *[Signature]*

PA-33E Narrative

This report is typed by P.O. Corstan D. COURT assigned to the First District - Late Power Shift. On 01-25-2015 at 8:10 pm, Squad 1413, Sergeant David LIGAS Jr., instructed me to write a PA-33 regarding a conversation we had with Radomir NMI BUZDUM, w/m 11-24-59, during a license premise check at 730 N. Old World Third Street (Boardroom Entertainment MKE) on 01-21-15. BUZDUM was explaining to Sergeant LIGAS and myself that he has dealt with other municipalities regarding his other license premises throughout the state of Wisconsin. BUZDUM said that he has sued these communities over the adult entertainment license before and every time the city (which he has sued) and himself have come to a settlement/compromised. He explained to us that he would sue for a large sum of money, the city would want to settle the lawsuit, and BUZDUM would ask for full nudity. The municipality would then counter offer the requirement of bikini tops/bottoms and ultimately they would settle for pasties on the top, thongs on the bottom. BUZDUM said it was a revolving cycle and this was just the way he would have to play it.

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC

Address of Licensed Premises: 730 N. Old World Third Street

Business Phone: 414-350-6463

Type of License: Tavern

District: 1

☐ Violation / ☒ Incident # Tavern Check

Date of Incident: 01/24/2015

Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (If no, explain in narrative section)

Licensee Notified by Officer: P.O. Corstan D. COURT

Date: 01/24/2015

Time: 12:37 am

Licensee or Agent's Name: SMITH, Robert F

Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968

Home Phone: 414-350-6463

Co-Licensee Name: Unknown

Home Address:

Class S License Number:

Date of Birth:

Home Phone:

Bartender Name: PROFFIT, Stephen T

Home Address: 904 Charles Street, Watertown, WI 53094

Class D License Number: none

Date of Birth: 08/25/1976

Home Phone: 262-501-8874

Licensed Person / Public Pass. Vehicle, etc.:

Home Address:

Class D License Number:

Date of Birth:

Home Phone:

VIOLATION/INCIDENT – DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Investigating Officer: PO Xavier BENTEZ

District / Bureau: 14

Date: 01/24/15

P.O. Xavier Bentes
Capt Leslie Thiele
 Commanding Officer

02-02-15
 Date

DISPOSITION – FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date
		INVESTIGATION UNIT		
		Advised	<i>2-9-15</i>	
		Deferred		
		By <i>[Signature]</i>		

PA-33E Narrative

This report is being submitted by PO Xavier BENITEZ assigned to District 1, Power Shift. On Saturday January 24, 2015 at 12:37 am, a license premise check was conducted by police officers at 730 N. Old World Third St (Boardroom Entertainment MKE) the officer's on scene were SGT Thomas ACKLEY (sq1411), PO Christopher MARTIN, PO Seth EDWARDS (sq 1420), PO Corstan COURT and myself (sq 1440).

During the premise check PO MARTIN used a handheld video camera and started to record for documentation. Through the main entrance/exit doors, the main bar that was in use was located in the northwest corner, with a bartender behind the bar working. Across the main bar, was now a lounge/ sitting area, located at the southwest corner. The stage area (with a vertical pole for dancing) was removed, which was located in the same location on previous checks (01-21-15 and 01-22-15). As I continued to do my walk through of the establishment I did not observe any females dancing. Michelle L HIGGINS, w/f 12-22-93, was observed wearing a two-piece flower bikini, Sarah M. JANUS, (w/f 07/30/86) was observed wearing a black two piece bikini. All the other females at the location were dressed causal and in normal clothing.

The subjects Robert F. SMITH (m/w 12-06-68), Radomir BUZDUM, (w/m 11-24-1959) and Timothy J. MILLER, (w/m 12-20-71) were cited for public entertainment license required for 01-21-15 and 01-22-15. The video was placed on police inventory # 15002661.

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC
 Address of Licensed Premises: 730 N. Old World Third Street
 Business Phone: 414-350-6463 Type of License: Tavern

District: 1

☐ Violation / ☒ Incident # Tavern Check

Date of Incident: 01/24/2015

Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (If no, explain in narrative section)

Licensee Notified by Officer: P.O. Corstan D. COURT

Date: 01/24/2015

Time: 12:37 am

Licensee or Agent's Name: SMITH, Robert F
 Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968
 Home Phone: 414-350-6463

Co-Licensee Name: Unknown
 Home Address:
 Class S License Number:

Date of Birth:
 Home Phone:

Bartender Name: MILLER, Timothy J
 Home Address: N866 County Road R
 Class D License Number:

Date of Birth: 12/20/1971
 Home Phone: 920-253-6391

Licensed Person / Public Pass. Vehicle, etc.:
 Home Address:
 Class D License Number:

Date of Birth:
 Home Phone:

VIOLATION/INCIDENT - DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Investigating Officer: PO Corstan D. COURT

District / Bureau: 14

Date: 01/24/15

P.O. Corstan D. Court
Capo DeLuThulo
 Commanding Officer

02-02-15
 Date

DISPOSITION - FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date
		SE INVESTIGATION UNIT		
		red		
		ferred		

By

[Signature]

PA-33E Narrative

This report is being submitted by P.O. Corstan D. COURT assigned to the First District, Late Power Shift. On Saturday, January 24, 2015 at 10:21 pm, a license premise check was conducted by police officers at 730 N. Old World Third St (Boardroom Entertainment MKE) the officer's on scene were SGT David LIGAS Jr. (sq1413), PO's Joshua POST and Mariolys FLORES (sq 1442), PO Corstan COURT and myself (sq 1440)

During the premise check PO FLORES used a handheld video camera and started to record for documentation. Through the main entrance/exit doors, the main bar that was in use was located in the northwest corner, with a bartender behind the bar working. Across the main bar, was now a lounge/ sitting area, located at the southwest corner. The stage area (with a vertical pole for dancing) was removed, which was located in the same location on previous checks (01-21-15 and 01-22-15). As I continued to do my walk through of the establishment I did not observe any females dancing.

While talking with the bar manager, Timothy J. MILLER, (w/m 12-20-71), I observed Michelle L HIGGINS (w/f 12-22-93), Sarah M. JANUS, (w/f 07/30/86) and Emily L BELLOVARY (w/f 10-18-91) walking upstairs from a basement entrance which was located behind the bar on the northwest corner of the establishment. I informed Sergeant LIGAS of the encounter and he went to investigate the basement with Officer LIMBERG. While they were in the basement, I questioned MILLER about why the females were in the lower part of the tavern and he told me that they would, on occasion, go into the basement and smoke because they do not want to go outside. I then questioned each one of the females, separately, about what they were doing in the basement and each stated that they smoke in the basement because it's cold outside. Sergeant LIGAS and Officer LIMBERG returned from the basement and said that there were two other female's (unknown names) in the basement, which walked upstairs upon their arrival. Officer LIMBERG told me that the basement was a wide-open area used for storage with an area (containing a davenport and six lawn chairs) looked to be for smoking. There was also an incense stick burning within that area.

All females inside the tavern were wearing "club" type clothing (skirts, shorts, cropped shirts, and bikini tops.

The video of the premise check was placed on inventory # 15002759

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

15-001

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC
 Address of Licensed Premises: 730 N. Old World Third Street
 Business Phone: 414-350-6463 Type of License: Blavern

District: 1

☒ Violation / ☐ Incident # Tavern Check

Date of Incident: 01/22/2015

Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (if no, explain in narrative section)

Licensee Notified by Officer: PO Christopher MARTIN

Date: 01/22/15

Time: 23:05

Licensee or Agent's Name: SMITH, Robert F
 Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968
 Home Phone: 414-350-6463

Co-Licensee Name: Unknown
 Home Address:
 Class S License Number:

Date of Birth:
 Home Phone:

Bartender Name:
 Home Address:
 Class D License Number:

Date of Birth:
 Home Phone:

Licensed Person / Public Pass. Vehicle, etc.:
 Home Address:
 Class D License Number:

Date of Birth:
 Home Phone:

VIOLATION/INCIDENT - DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited: Robert SMITH
 Citation Number: 6156236-2

Violation & Ord. / Statue No.: 108-5-1-A

Date of Birth: 12-06-68
 Court Date: 03/13/15

Name of Person Cited: Radomir BUZDUM
 Citation Number: 6156234-0

Violation & Ord. / Statue No.: 108-5-1-A

Date of Birth: 11/24/59
 Court Date: 03-13-15

Name of Person Cited: Timothy J MILLER
 Citation Number: 6156232-5

Violation & Ord. / Statue No.: 108-5-1-A

Date of Birth: 12/20/71
 Court Date: 03-13-15

Name of Person Cited:
 Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:
 Court Date:

Name of Person Cited:
 Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:
 Court Date:

Investigating Officer: PO Christopher MARTIN

District / Bureau: 14

Date: 01/23/15

Capo Leslie Thiele
 Commanding Officer

06-21-15
 Date

DISPOSITION - FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date

LICENSE INVESTIGATION UNIT

Received 6-28-15

Referred

By

[Signature]

This report is being submitted by PO Christopher MARTIN, assigned to District 1, Power Shift.

On Thursday, January 21, 2015 at 10:53pm, a license premise check was conducted by police officers at 730 N. Old World Third St (Boardroom Entertainment MKE) the officers on scene were Sgt. Thomas ACKLEY (sq 1411), Sq. 1440 (PO Xavier BENITEZ and Corstan COURT), and Sq. 1420 (PO Seth EDWARDS and I). Prior to entering the establishment, I turned on a handheld video camera and started to record the investigation for documentation.

Upon entering the establishment I observed a black female, later identified as Louria L RAMSEY (B/F, 03-18-86 of 4940 N 18Th ST., PH# 414-650-2278), dancing on a stage wearing a black tight fit dress with horizontal slits on both sides of the dress. The horizontal slits went the whole length of the dress. RAMSEY had the top of the dress pulled down underneath her breast with black heart shaped "pasties" with rhinestones covering her areolas. Once RAMSEY noticed that the police had entered the establishment, she pulled the top of her dress back over her breast covering her "pasties" and continued to dance on the stage that had a pole.

Premise Description

Through the main entrance/exit doors, the main bar that was in use was located in the northwest corner, with a bartender behind the bar working. Across the main bar, was the stage area (with a vertical pole for dancing) located at the southwest corner. I continued to walk east through the premises and observed a large back bar area not in use in the south east corner. I then walked to a side room on the north wall and in the back room I observed chairs displayed out on the perimeter of the room and two curtained areas with a chair in the middle of each area, which appeared to be used as a private dance area. Continuing east along the north wall, were the bathrooms. Along the southeast wall it led to an employee only area. This area had a kitchen and a room designated for self-employed dancers, which was being used as a changing room for dancers. The changing room had lockers, mirrors, and tables so that the dancers could change clothing. The area had several pieces of clothing laying on the floor and on the table. I located a dancer in this room who was identified as Sarah M JANUS (W/F, 07/30/86, of 612 E. Harvard St). JANUS was wearing black underwear and a black bra with silver rhinestones. A back exit was also located, which is not used by customers.

I then spoke with RAMSEY, who stated she is employed as an independent contractor and that she does this job as a part-time. RAMSEY stated that she has a real full time job. RAMSEY asked if the video that was taken of her dancing would be on the news, as it would affect her other job.

Located at the main bar were several female dancers who were identified as Sara Jean BOIS (W/F, 11/23/83 of N48W28966 County Road JK) who was wearing a black and white checkered button shirt, and pink women briefs underwear. Michelle Lyn HIGGINS (W/F, 12-22-93 of N8210 High Rd Watertown, WI) was wearing leopard print underwear and a white bra. Stacy A THORMAN (W/F, 07/14/83, N6975 Saucer Dr, Watertown, WI) who was wearing Black lacy underwear and bra. Officers who conducted the tavern check on Wednesday, January 21, 2015 interviewed these dancers.

PO Seth EDWARDS located another dancer at the bar that was identified as Azaria F WILDER (B/F, 07-11-91 of 3495 N Oakland Av) who was wearing a leopard print dress, thigh high, with a red bra under her dress.

There were also 4 patrons located inside the establishment near the main bar area.

Also on scene during the tavern check was Robert F SMITH (W/M, 12/06/68) who is the agent of Boardroom Entertainment MKE, LLC. Radomir BUZDUM (W/M, 11/24/59, N9661 BOJE CT, Watertown, WI), and Timothy J MILLER (W/M, 12/20/71, of N866 County Road R, Watertown, WI)

SGT ACKLEY advised BUZDUM that citations would be issued from last night (01/21/15) and tonight (01/22/15). SGT ACKLEY asked BUZDUM if he would like to be issued citations tonight, as officers would be inside the establishment longer or on a slower night so that our presence wouldn't interfere with his business. BUZDUM requested the citation to be issued at a later date. SGT. ACKLEY also informed BUZDUM that license premise checks would continue until the tavern no longer has violations or until this matter is settled in court. SGT. ACKLEY informed BUZDUM that the following citations would be issued for City of Milwaukee Ordinance 108-5-1-A (Public Entertainment premise license required)

A copy of the video was placed on INV# 15002496

This following information was written by PO Seth EDWARDS assigned to District 1, Power Shift.

On Friday, January 23, 2015 at approximately 0150 I along with Squad 1440 (PO Xavier BENITEZ and PO Cortsan COURT) returned to 730 N. Old World Third St, which is known, as Rusty's for a follow up on an individual who provided false information during and initial Field Interview and stated she was Quiana F MONROE (B/F 07-11-1991, 3495 N. Oakland Ave, (414) 312-0288). Upon entering the establishment I observed a W/F dancing on the stage area directly west of the entrance. She was topless wearing only underwear and high heels. Her areolas were exposed and she did not have any pasties on. The W/F then got off the stage and ran to the back. I located MONROE who stated again that the information she provided me was correct. I then asked MONROE to step outside to my squad car so we could identify her and she agreed. When we arrived at the squad car MONROE provided her real information and a search identified her as Azaria F WILDER (B/F 07-11-1991, 3495 N Oakland Ave).

SMITH, MILLER and BUZDUM were issued citations on January 24, 2015 at about 1:15 AM for the violations that occurred on January 21, 2015 and January 22, 2015.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

BOARDROOM ENTERTAINMENT MKE, LLC.,))
Plaintiff,))
vs.))
CITY OF MILWAUKEE, a Wisconsin))
Municipal corporation,))
Defendant.))
	No.
	PLAINTIFF DEMANDS
	TRIAL BY JURY

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES Plaintiff, BOARDROOM ENTERTAINMENT MKE, LLC., and
complaining of CITY OF MILWAUKEE, a Wisconsin Municipality, and alleges as follows:

PARTIES JURISDICTION AND VENUE

1. Plaintiff Boardroom Entertainment MKE, LLC., is a corporation organized under the laws of the State of Wisconsin, with its principal place of business in Milwaukee County, Wisconsin.
2. Plaintiff is the tenant in a lease to the first floor of the real estate located at 730 N. Old World Third Street, Milwaukee, Wisconsin for a period of twenty-nine years.
3. Plaintiff desires to use that property for the purpose of operating a cabaret and retail sale of alcoholic beverages, including the presentation of constitutionally protected erotic entertainment, as well as the incidental sale of other items.
4. Defendant City of Milwaukee is a City organized under the laws of the State of Wisconsin and is located in Milwaukee County, Wisconsin.
5. All references to Defendant Milwaukee are, inter alia, understood to include any and all

of its departments, agents, officials and employees.

6. Unless otherwise noted, the acts of these employees and agents were also done under the color and pretense of the statutes, ordinances, regulations, customs and usages of Milwaukee, and its divisions, pursuant to the official custom, habit, or policy thereof, under color of its authority.
7. This Court has jurisdiction over the claims raised herein pursuant to 28 U.S.C. 1331, 1343 and 42 U.S.C. 1983, 1988.
8. Venue is appropriate in the Eastern District of Wisconsin, since the acts complained of occurred within that District.

FACTUAL ALLEGATIONS

9. Plaintiff has entered into a lease for the period of twenty-nine years for the first floor of the real property located at 730 N. Old World Street within the boundaries of Milwaukee, Wisconsin.
10. Plaintiff has obtained a permit from Defendant to serve alcoholic beverages at that location.
11. Plaintiff intends to operate a club on those premises which will provide entertainment to the public, including adult entertainment.
12. The right to disseminate adult-oriented literature and media is protected by the First and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the Wisconsin Constitution.
13. Defendant has enacted a series of ordinances which purport to prohibit Plaintiff from offering the constitutionally protected entertainment it intends to offer to the public unless

it obtains "either an annual license or permit therefor." Section 108-5.1, Milwaukee Ordinances.

14. The requirements of Defendant's Ordinances constitute a prior restraint of speech, in that Plaintiff cannot offer adult entertainment to the public without having first obtained either a license or permit from Defendant.
15. The requirements for the issuance of a Public Entertainment License are invalid and unconstitutional for the following reasons:
 - A. There is no requirement that the Application for the license required be issued within a brief period of time. Rather, the Ordinance sets forth a cumbersome, open-ended process with no time limitations for the issuance of a decision. 108-5.7.
 - B. The Ordinance is vague and indefinite in that it contains no objective criteria for the issuance or denial of a license, but allows an application for the license to be denied for reasons which are arbitrary and capricious, including: "plans the application has to insure the orderly appearance and operation of the premises with respect to litter and noise . . . as well as a description of how applicable noise standards will be met for the subject premises" (108-5.b-7-g); "whether or not the applicant's proposed operations are basically compatible with the normal activity of the neighborhood in which the licensed premises is to be located: (108-b-7-1); "such other reasonable and pertinent information the common council or the proper licensing committee may from time to time require" (108-5.b-9); "the appropriateness of the location and premises where the entertainment premises is

to be located and whether use of the premises for public appropriateness of the location and premises where the entertainment premises is to be located and whether use of the premises for public entertainment will create undesirable neighborhood problems. (108-7.d-2); "the fitness of the location of the premises to be maintained as the principal place of business to include whether there is an overconcentration of businesses licensed under this chapter" (108-7.d-3); the applicant's record in operating similarly licensed premises (108-7.d-4); any other factors which reasonably relate to the public health, safety and welfare (108-7.d-6).

- C. The hearing procedures in instances where Defendant believes it has reason to deny the application allows Defendant to introduce evidence on matters which are vague, indefinite and uncertain, including

"b. the appropriateness of the location and premises where the licensed premises is to be located and whether use of the premises for the purposes or activities permitted by the license would tend to facilitate a public or private nuisance or create undesirable neighborhood problems . . .";

"c. The fitness of the location of the premises to be maintained as the principal place of business, including but not limited to whether there is an overconcentration of businesses of the type for which the license is sought, whether the proposal is consistent with any pertinent neighborhood business or development plans, or proximity to areas where children are typically present;"

"f. Any other factors which reasonably relate to the public health, safety and

welfare.”

16. The conditions and standards which Milwaukee may impose on the issuance of any license permits for entertainment are vague and vest unbridled discretion in Milwaukee's officials whether to grant or deny a license.
17. Milwaukee's licensing/permitting procedures for entertainment fail to provide for prompt judicial review.
18. Milwaukee's licensing/permitting scheme for adult uses fail to serve a substantial or significant governmental interest, and is not narrowly tailored to serve any such interest.
19. Milwaukee's ordinances were adopted with a predominately censorial purpose and without any evidence or factual basis to believe that they are required to serve a substantial governmental purpose.
20. Milwaukee's attempt to regulate entertainment does not do so by the least restrictive means available.
21. Milwaukee's restrictions on entertainment fail to provide for adequate alternative avenues of communication.
22. Milwaukee's zoning, licensing and permitting procedures for entertainment are unconstitutional on their face, as applied to Plaintiff.
23. Milwaukee's ordinances regulating entertainment violate the First and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the Wisconsin Constitution.
24. Although Plaintiff has not yet offered any entertainment at its business, Defendant, through Adam Stevens, an Assistant City Attorney, has threatened to close Plaintiff's

business and revoke the licenses which it currently holds in the event that Plaintiff offers adult entertainment to the public.

25. When Plaintiff opened its doors for business on January 14, 2015, serving only alcoholic liquor for which it has a license, but offering no live entertainment, eight to ten Milwaukee police officers descended on Plaintiff's premises, walked through the entire premises and accused its manager of not having the appropriate "paperwork" to operate its business, disrupting Plaintiff's business and disturbing its customers.
26. As a result of Defendant's actions, Plaintiff is entitled to relief pursuant to 42 U.S.C. §1983.

COUNT I

Declaratory Relief

27. Plaintiff realleges paragraphs 1-26 as Paragraph 27.
28. There is an action for Declaratory Relief pursuant to 42 U.S.C. 2201 and 2202.
29. There is an actual, bona fide controversy between Plaintiff and Defendant City of Milwaukee in that Plaintiff contends that the subject ordinances are preventing it from commencing the operation of a lawful business and are unconstitutional on their face, and as applied, in violation of the First and Fourteenth Amendments to the United States Constitution, whereas Defendant Milwaukee presumably contends that its ordinances and actions are constitutional.
30. Plaintiff is unable to use this property to which it has a valid lease and permits for the constitutionally protected purposes it desires without harassment and threats of prosecution by Defendant.

WHEREFORE, Boardroom Entertainment MKE, LLC., requests this Court to enter a Declaratory Judgment finding that the subject ordinances are unconstitutional on their face and as applied to Plaintiff, and further award court costs incurred in prosecuting this action including a reasonable attorney's fees pursuant to 42 U.S.C. 1988, and such further relief pursuant to 28 U.S.C. 2202 as this Court may deem appropriate.

Count II

Injunctive Relief

31. Plaintiff realleges Paragraphs 1-26 as paragraph 31.
32. This is an action for injunctive relief.
33. Defendant has harassed Plaintiff and its customers by extraordinary visits to its premises by several of its law enforcement officers, and has explicitly threatened to enforce the subject Ordinances against Plaintiff, to revoke the licenses and permits which have already been issued to Plaintiff for the operation of its business in retaliation for its intention to offer entertainment protected by the First Amendment.
34. The threats to take action against Plaintiff for offering constitutionally protected entertainment constitutes a prior restraint on Plaintiff's right to freedom of speech.
35. The mere existence of a prior restraint on free speech causes a chilling effect on protected expression.
36. Any deprivation of First Amendment rights constitutes irreparable injury per se.
37. Any harm to Defendant City of Milwaukee resulting from the issuance of an injunction is substantially outweighed by the harm to Plaintiff caused by the deprivation of its cherished First Amendment rights.

38. It is always in the public interest to protect constitutional freedoms by enjoining unconstitutional laws.
39. Any legal remedy is per se inadequate when loss of First Amendment rights is involved.
40. Injunctive relief is appropriate upon a declaration that a law is unconstitutional.

WHEREFORE, Plaintiff respectfully requests this Court to grant it the following relief:

- A. Enter a temporary restraining order immediately prohibiting Defendant from taking any action to interfere with the operation of Plaintiff's business, including taking any action to affect the licenses and permits currently held by plaintiff, until a hearing can be held on Plaintiff's Motion for a Preliminary Injunction.
- B. Hold a hearing and temporarily and permanently enjoin Defendant from applying and enforcing Its Ordinances, in whole or in part, against Plaintiff.
- C. Award Plaintiff its attorney's fees and costs pursuant to 42 U.S.C. 1988.
- D. Award Plaintiff such other and further relief as this Court deems fit, just and equitable.

Of Counsel:
Poltrock & Giampietro
123 W. Madison, Suite 1300
Chicago, Illinois 60602
312-236-0606; Fax 312-236-9264
wgiampietro@wpglawyers.com

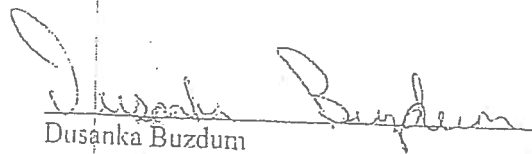
S/Wayne B. Giampietro
One of Plaintiff's attorneys

Andrew Arena
110 Old Water Third Street
Riverfront Plaza, Suite 210
Milwaukee, Wisconsin 53203
414-645-6100; Fax 414-645-3500
Andrew@ArenaLawOffices.com

DECLARATION
(928 U.S.C. § 1746)

I, Dusanka Buzdum, do declare as follows:

1. I am a member of Boardroom Entertainment MKE, LLC., Plaintiff herein; I have read the foregoing Complaint. I have knowledge of the allegations contained in it and all of the facts alleged are true and correct.
2. I declare, under penalty of perjury, that the foregoing is true and correct.
3. I have executed this Declaration on January 10th, 2015.


Dusanka Buzdum

Six Star Holdings, LLC v. City of Milwaukee

United States District Court for the Eastern District of Wisconsin

March 18, 2013, Decided; March 18, 2013, Filed

Case No. 10-C-0893

Reporter

932 F. Supp. 2d 941; 2013 U.S. Dist. LEXIS 37026; 2013 WL 1130437

SIX STAR HOLDINGS, LLC and FEROL, LLC,
Plaintiffs, v. CITY OF MILWAUKEE, Defendant.

Counsel: [**1] For Six Star Holdings LLC, Ferol LLC, Plaintiffs: Jeff Scott Olson, Jeff Scott Olson Law Firm SC, Madison, WI.

For City of Milwaukee, Defendant: Adam B Stephens, Stuart Mukamal, Milwaukee City Attorney's Office, Milwaukee, WI.

Judges: LYNN ADELMAN, United States District Judge.

Opinion by: LYNN ADELMAN

Opinion

[*943] DECISION AND ORDER

Since 2009, plaintiffs Six Star Holdings, LLC and Ferol, LLC have sought to open night clubs featuring erotic dance entertainment in the downtown area of the City of Milwaukee. In order to both serve liquor and present erotic dancing, [*944] the plaintiffs had to obtain two licenses under the Milwaukee Code of Ordinances: a tavern license and a "tavern amusement" license. In August 2010, each plaintiff applied for both licenses, and the City denied their applications. A year later, in September 2011, plaintiff Six Star decided to open a night club that featured erotic dance entertainment but did not serve alcohol. Six Star thought that to open such a "dry" gentlemen's club, it needed to be licensed to operate a theater. It therefore applied for a theater license. However, the City never acted on that application. Instead, a few months after Six Star applied for a theater license, the City repealed [**2] the chapter of the Code of Ordinances that provided for issuance of theater licenses. At the same time, the City also repealed the ordinance

governing tavern-amusement licenses as well as a related ordinance governing "public entertainment clubs." The City replaced these ordinances with new ordinances governing "public entertainment premises."

In the present lawsuit, which arises under 42 U.S.C. § 1983, the plaintiffs allege that the former ordinances governing tavern amusement, theaters, and public entertainment clubs violated the First Amendment. They also allege that the tavern, tavern-amusement, and theater ordinances were unconstitutionally applied to them. The plaintiffs do not seek any injunctive or other form of prospective relief, and they do not bring any claims involving the newly enacted ordinance governing public entertainment premises. Instead, they seek only damages for the time period in which the repealed ordinances (and the tavern ordinance, which is still in force) prevented them from offering erotic dance entertainment in the City. Before me now are the parties' motions for summary judgment.

I. BACKGROUND

The plaintiffs are managed by John Ferraro, who is the manager [**3] of three existing erotic dance establishments in Wisconsin, each named Silk Exotic Gentlemen's Club. One of these establishments is located in the City of Milwaukee, although not in the downtown area. In 2009, Ferraro formed Ferol and leased premises located on Pittsburgh Avenue in downtown Milwaukee, intending to open a new erotic dance establishment, named Satin. Because Satin would have offered both liquor and erotic entertainment, Ferol needed to obtain both a tavern license and a tavern-amusement license. Ferol applied for both licenses in July 2009. Once the applications were filed, the alderman for the district in which Satin was to be located informed his constituents of Ferol's

proposal. Many in the neighborhood voiced opposition to the proposal, and Ferol's lawyer advised it that, based on the amount of public opposition, the applications were sure to be denied. Under the Code of Ordinances, when a license application is denied, the applicant is disqualified from applying for the same license for the same premises for one year. See Milwaukee Code of Ordinances § 85-13-4-a. After considering the advice of its lawyer, Ferol decided to withdraw its applications rather than risk [**4] having the applications denied and being prohibited from reapplying for one year.

In August 2010, Ferraro decided to reapply for tavern and tavern-amusement licenses for Satin. He also decided to attempt to open a third erotic dance establishment in the City of Milwaukee and formed Six Star for the purpose of operating that establishment, which would have been named Silk East. Six Star proceeded to execute a lease for a location on Old World Third Street in downtown Milwaukee and to apply for the necessary tavern and tavern-amusement licenses.

[*945] Soon after Ferol and Six Star filed their applications, community members expressed opposition to the proposals. However, rather than withdraw their applications, both Ferol and Six Star decided to proceed to a hearing before the Licenses Committee of the Milwaukee Common Council, which was held on September 20, 2010. During the hearing, the Committee heard testimony from members of the communities surrounding each proposed establishment. The plaintiffs had lawyers present and were permitted to cross-examine the community members who testified in opposition to the applications. The plaintiffs were also permitted to present their own witnesses in [**5] support of their applications.

The Committee heard Six Star's applications first. Sixteen witnesses testified in opposition to its proposal for the Old World Third location. Ten of those witnesses represented commercial interests in the neighborhood, such as existing retail stores, hotels, and business associations. They almost uniformly opposed using the location as an erotic dance establishment on the ground that such a use would have been inconsistent

with a development plan that had been adopted for the neighborhood. The business representatives testified that the goal of the development plan was to attract more retail establishments to the neighborhood, such as clothing stores and other shops, and that the presence of a gentlemen's club would deter retailers from moving in. Most of the remaining witnesses were residents of the neighborhood, including individuals who lived in apartments above the proposed location. Those witnesses expressed concern about the noise that the proposed establishment would generate, about the safety of the neighborhood given the kind of clientele adult establishments are known to attract, and about the effect of the establishment on property values. [**6] Some of the residents also noted that the area was already oversaturated with bars and night clubs. One resident, Francisco Camacho, indicated that he found erotic dancing offensive. He testified that he opposed both Six Star's and Ferol's proposals on the ground that erotic dancing perverts the community and is against the teachings of Islam.

Alderman Bauman, the alderman for the district, testified in opposition to Six Star's applications. He mostly emphasized the concerns of the business community and their efforts to turn the area into one focused on shopping and retail. As he explained:

There is an inherent conflict between trying to generate retail and commercial with a gentlemen's club. Forget the morality issue, forget the propriety of it all, just look at the economics of it. They are somewhat different markets. They are looking for different things by their very definition. And you're not going to put an American Girl's store next to a gentlemen's club on Chicago Avenue and Michigan Avenue, for example. They are conflicting markets.

You've heard from the downtown. The City of Milwaukee has invested, I believe it's \$50,000 with a match from the downtown stakeholders of another [**7] \$50,000 for a \$100,000 fund to attempt to catalyze downtown retail investment. Again, we're working at cross

purposes. If we allow clubs that will retard that retail development, our investments are making no sense.

Continuation of Licenses Committee Hearing Tr., Sept. 20, 2010 at 12-13, ECF No. 61-2.

Once all testimony had been taken, the Committee discussed Six Star's applications. Alderman Hamilton moved to recommend that the Common Council deny the applications on the ground that granting the licenses would be contrary to the [*946] health, safety and welfare of the neighborhood. He explained that his motion was based on the inconsistency between an erotic dance establishment and the kind of retail environment that the neighborhood was trying to create, and also on the residents' "resounding opposition" to the proposal. See id. at 19-20. The Committee voted to recommend that the Common Council deny Six Star's applications. The vote was unanimous.

Turning to Ferol's applications, the Committee heard testimony from eleven witnesses who opposed the proposal. The witnesses included representatives of the business community and residents of the neighborhood. Both the residents and the business [**8] representatives stated that the proposal was inconsistent with a development plan that had been adopted for the area. As one witness explained, the development plan called for a mix of residential and retail uses, including so-called "mixed" uses in which retail or commercial establishments occupied the first floor of a building and residential units occupied the upper floors. See Continuation of Licenses Committee Hearing Tr., Sept. 20, 2010 at 22-25, ECF No. 62-1. The plan specified that the commercial uses in the neighborhood would be "boutique-scaled," which meant that they would be small-scale businesses such as boutique retailers and design showrooms. Id. at 22-23. The witness explained that the proposal for Satin involved a large facility (20,000 square feet and up to 1,000 to 1,200 patrons per day) that was significantly out-of-scale with this focus on boutique uses. The witness further explained that there was not enough parking in the area to support a facility of that size. Other witnesses echoed this concern about adequate parking. Still other witnesses expressed concern about

the effect of the proposal on residential property values and on neighborhood safety, and about [**9] potential noise and traffic issues.

Alderman Witkowiak, the alderman for the district, also testified in opposition to Ferol's applications. He mostly reiterated the concerns expressed by the community members who testified in opposition to Ferol's applications. He explained that the proposal was too large and out-of-scale for the neighborhood, that there would be inadequate parking space to support the proposal, that the proposal was inconsistent with the development plan for the area, and that some residents were concerned about safety and property values.

Once all testimony had been taken, the Committee discussed Ferol's applications. This time, Alderman Kovacs moved to recommend that the Common Council deny them. He cited the overwhelming objections by the residents and businesses in the neighborhood and potential parking and traffic problems. The Committee unanimously voted to recommend that the Common Council deny Ferol's applications.

The next day, September 21, 2010, the Common Council voted to accept the Licensing Committee's recommendations on Six Star's and Ferol's applications for tavern and tavern-amusement licenses.

Approximately one year later, Six Star decided that it would [**10] attempt to operate the Old World Third location as a "dry" gentlemen's club—i.e., a night club that featured erotic dance entertainment but that did not serve alcohol. Six Star thought that it needed a theater license under Chapter 83 of the Code of Ordinances to operate such an establishment, and on September 14, 2011, it applied for such a license. Pursuant to its usual practice, the City Clerk's office notified the alderman for the district that the application had been filed. That was Alderman Bauman, and he instructed the City Clerk to "hold" Six Star's application. Because of this hold, Six Star's application was not set for a hearing before the Licenses Committee, and no action was ever taken on [*947] the application before the City repealed Chapter 83.

II. DISCUSSION

A. Claims Involving Tavern and Tavern-Amusement Licenses

The plaintiffs' primary claims are that the tavern-amusement ordinance, which, before March 1, 2012, appeared in Chapter 90 of the Milwaukee Code of Ordinances,¹ was unconstitutional on its face and unconstitutionally applied to them. However, the tavern-amusement ordinance did not, by itself, prevent either plaintiff from operating taverns that featured erotic dance [**11] entertainment. Rather, the plaintiffs needed both tavern licenses and tavern-amusement licenses to open the kind of night clubs they planned to open.² The City considered the plaintiffs' applications for both of these kinds of licenses together at the same hearing and denied them both for the same reasons. See Licenses Committee Hearing Tr., Sept. 20, 2010, at 2, ECF No. 59-1; Continuation of Licenses Committee Hearing Tr., Sept. 20, 2010, at 3, ECF No. 62-1. The plaintiffs have not argued that the tavern-licensing ordinance was unconstitutional on its face and have not clearly developed any argument showing that it was unconstitutionally applied to them. Yet, unless plaintiffs could show that the tavern-licensing ordinance was either unconstitutional on its face or unconstitutionally applied to them, they would not be entitled to damages even if the tavern-amusement ordinance were invalidated. Nonetheless, the arguments that plaintiffs make against the tavern-amusement ordinance to a certain extent imply that the City applied the tavern-licensing ordinance unconstitutionally, and the City does not argue that it is entitled to summary judgment on the ground that the plaintiffs have [**12] not brought a proper challenge to the tavern-licensing ordinance. Thus, I consider plaintiffs to be challenging the

tavern-amusement ordinance both on its face and as-applied, and the tavern-licensing ordinance as-applied.

Turning to these challenges, the plaintiffs' first argument is that the City imposed a "prior restraint" on speech without complying with the strict procedural requirements governing prior restraints. See, e.g., FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990); City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988); Freedman v. Maryland, 380 U.S. 51, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965). However, the Seventh Circuit rejected that very argument in Blue Canary Corp. v. City of Milwaukee, 251 F.3d 1121 (7th Cir. 2001). [**13] There, the Seventh Circuit considered a challenge to a City of Milwaukee tavern-licensing decision that was in all material respects the same as the challenge the plaintiffs bring in the present case—a challenge involving the City's denial of a tavern license and an appropriate tavern-amusement license for a tavern that wanted to present erotic entertainment.³ The court framed [**948] the question presented as whether the City was permitted to take into account, in deciding whether to grant the licenses, "the character of the entertainment that the plaintiff served with its drinks." Id. at 1123. The plaintiff had argued that, in answering that question, the court should treat the City's licensing requirements as prior restraints. However, the court rejected that argument and evaluated the City's requirements under the standards applicable to time, place, or manner restrictions. Id. Accordingly, in the present case, I must treat the City's licensing requirements as time, place, or manner restrictions rather than

¹ Before March 1, 2012, sections 90-33, 90-34, and 90-35 of the Milwaukee Code of Ordinances pertained to tavern-amusement licenses. When I use the term "tavern-amusement ordinance," I am referring to those former sections of the Ordinances.

² Various provisions in Chapter 90 of the Code of Ordinances pertain to tavern licensing. Section 90-5 specifies the criteria for obtaining such a license, and when I use terms like "tavern-licensing ordinance" or "tavern ordinance," I am referring to that section.

³ In Blue Canary, the tavern sought renewal of its existing tavern license rather than a new license. However, for present purposes, there is no material difference between renewal of an existing license and denial of an application for a new license.

as prior restraints.⁴ See also *Schultz v. City of Cumberland*, 228 F.3d 831, 851 (7th Cir. 2000) ("Licensing, though functioning as a prior restraint, is constitutionally legitimate [**14] when it complies with the standard for time, place or manner requirements.").

Blue Canary also establishes that a city's decision to deny tavern licenses on the basis of the "character" of the applicant's proposed entertainment is, in general, a permissible regulation of the time, place, or manner of expressive activity. As the court explained, a city is permitted to consider the secondary effects of the entertainment, such as noise, safety, parking and traffic problems, and the general incompatibility of the entertainment with the normal activity of the neighborhood, when making licensing decisions. See 251 F.3d at 1123-25. In the present case, the transcript of the licensing hearing indicates that the City denied the plaintiffs' license applications for reasons having to do [**15] with these secondary effects rather than with disapproval of the content of the proposed expressive activity. The primary reason for denying the licenses for Silk East was that its presence in the neighborhood would have deterred the kind of retailers the community was trying to attract. As the alderman for the district testified, a retailer like American Girl® is unlikely to open a shop next to a gentlemen's club. This was a permissible basis for denying the licenses. See *id.* at 1124 ("Countless cases allow municipalities to zone strip joints, adult book stores, and like erotic sites out of residential and the classier commercial areas of the city or town.

Establishments that purvey erotica, live or pictorial, tend to be tawdry, to be offensive to many people, and to attract a dubious, sometimes a disorderly, clientele. Liquor and sex are an explosive combination, so strip joints that sell liquor are particularly unwelcome in respectable neighborhoods."). Likewise, the decisions to deny the licenses for Satin were based on its incompatibility with the neighborhood—the community members testified that the proposal was out-of-scale and that it would present parking, traffic, and safety [**16] issues. Again, a decision based on such secondary effects rather than on disagreement with the content of the expressive message qualifies as a permissible time, place, or manner regulation.⁵

[*949] The plaintiffs argue that the City's decisions cannot be upheld under a secondary effects rationale because the City did not produce formal studies or other credible evidence supporting its conclusion that erotic entertainment generates secondary effects. See Reply Br. at 5-8, ECF No. 75. However, the cases on which plaintiffs rely for the proposition that a city must produce evidence concerning secondary effects involved ordinances that, by their terms, expressly regulated erotic entertainment. See *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002), *Annex Books, Inc. v. City of Indianapolis*, 581 F.3d 460 (7th Cir. 2009), *R.V.S., L.L.C. v. City of Rockford*, 361 F.3d 402, 411 (7th Cir. 2004). In the present case, neither the tavern-licensing ordinance nor the tavern-amusement ordinance purported to

⁴ The plaintiffs contend that *Blue Canary* was wrongly decided. See Opening Br. at 31 n.4. However, as plaintiffs acknowledge, I am bound by Seventh Circuit precedent.

⁵ Although the vast majority of the testimony at the hearing focused on secondary effects, at least one community member's objection to Silk East and Satin was based, in part, on his moral objection to erotic entertainment. See Licenses Committee Hearing Tr., Sept. 20, 2010 at 5-7, ECF No. 59-1 (testimony of Francisco Camacho). However, objections like Mr. Camacho's were few and far between, and the record of the hearing does not indicate that the Licenses Committee gave those objections any weight. To be sure, the aldermen said that their decisions were based on the "overwhelming" or "resounding" neighborhood opposition to the proposed establishments, and they did not disclaim statements like Mr. Camacho's, but given that the vast majority of the opposition was based on secondary effects, I cannot conclude that the content-based objections played a causal role in the City's decision. I also note that, in *Blue Canary*, at least some of the public opposition to the renewal of the plaintiff's liquor [**17] license was based on "moral disapproval of the entertainment," 251 F.3d at 1122, yet the court found no constitutional violation in the City's decision not to renew the license.

regulate erotic activity specifically. Rather, those ordinances were designed to deal with the direct effects of taverns and the secondary effects of all forms of tavern entertainment. See Milwaukee Code of Ordinances [*18] § 90-35-1 (stating that City had found that tavern entertainment "can be a source of noise, litter, large and unruly congregations of people, and traffic and parking congestion that adversely affects the health, safety and welfare of the people of the city of Milwaukee"). No authority of which I am aware holds that a city must rely on formal studies before it may conclude that tavern entertainment has the potential to produce secondary effects such as noise, parking, and traffic problems, or the potential to conflict with the normal activity of a neighborhood. That conclusion would seem to be obvious, just as it is obvious that rallies held in a public park have the potential to generate excessive noise and other secondary effects. See Thomas v. City Park District, 227 F.3d 921, 924 (7th Cir. 2000). Moreover, at the licensing hearing, the City did take evidence, in the form of testimony from those in the neighborhood, before concluding that the plaintiffs' proposals would in fact generate undesirable secondary effects. Blue Canary establishes that neighborhood testimony is appropriate evidence concerning the secondary effects of a proposed form of tavern entertainment. 251 F.3d at 1124-25. [*19] Thus, before the City denied the plaintiffs' license applications, it did consider appropriate evidence concerning secondary effects, and so the City's decisions were not inconsistent with Alameda Books and related cases.

The plaintiffs also argue that the City cannot satisfy the prong of the time, place, or manner test requiring the government to leave open reasonable alternative avenues of communication. See City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 47, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986).⁶ Although the plaintiffs

initially argue that the City cannot show that it left open reasonable alternative avenues for all forms of tavern entertainment—including musical performances, stand-up comedy, dancing, karaoke, and other forms of tavern entertainment—their focus is on the lack of alternative avenues for erotic entertainment.⁷ Plaintiffs argue that, to carry its burden as to reasonable alternatives, the City must point to parcels of property [*950] where erotic entertainment was permitted as a matter of right rather than at the discretion of the City's licensing authorities. However, neither the Supreme Court nor the Seventh Circuit has held that a time, place, or manner restriction leaves open reasonable alternative [*20] avenues of communication only if it permits certain forms of expression as a matter of right in designated areas. Thus, the City's burden is not to point to sites where erotic dancing was permitted without a license. Rather, to satisfy the reasonable-alternatives requirement, the City must show that it did not exercise its licensing authority in a way that resulted in an unreasonable restriction on erotic expression.

To that end, the City has offered evidence as to the number [*21] of taverns allowed to present erotic dance entertainment in the City of Milwaukee between 2006 and 2010. There were fifteen taverns that presented erotic entertainment on a regular basis in 2006, fourteen in 2007, ten in 2008, twelve in 2009, and eleven in 2010. Each year, a few other taverns offered erotic entertainment on a part-time or occasional basis. (In 2010, for example, five taverns offered occasional erotic entertainment.) The plaintiffs contend that these numbers are insufficient for a city with a population close to 600,000. However, no evidence in the record indicates that any person who wanted to view erotic dance entertainment in the City of Milwaukee between 2006 and 2010

⁶ Under the usual formulation of the test, time, place, or manner restrictions are constitutional if they are content-neutral, narrowly tailored to serve a substantial governmental interest, and do not unreasonably limit alternative avenues of communication. See, e.g., Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989); City of Renton, 475 U.S. at 46-47.

⁷ To the extent that plaintiffs actually mean to argue that the City did not leave open reasonable alternative avenues for tavern entertainment in general, it is sufficient to note that there is nothing in the record to suggest that there was a shortage of tavern entertainment in the City of Milwaukee during the period of time for which plaintiffs seek damages.

found it unreasonably difficult to do so.

The plaintiffs contend that even if the number of erotic dance establishments in Milwaukee was sufficient to meet the needs of consumers of such entertainment, a time, place, or manner restriction must also allow those who wish to present such entertainment a reasonable opportunity to present it. That general proposition is true. See North Avenue Novelties, Inc. v. City of Chicago, 88 F.3d 441, 444 (7th Cir. 1996) (noting that, when examining availability of [*22] reasonable alternatives, "it is necessary to focus both on the ability of producers as a group to provide sexually explicit expression, as well as on the ability of the public as a whole to receive it"). However, the evidence in the record does not show that the licensing requirements left purveyors of erotic entertainment with no reasonable opportunities to operate in the City. True, the licensing ordinance prevented the plaintiffs from opening erotic dance establishments at their chosen locations, but the plaintiffs have not shown that they could not have found alternative locations in the City. Of course, because of the licensing requirements, the plaintiffs could not have known for sure whether they would have been permitted to offer erotic dance entertainment at any specific alternative location unless they actually applied for a license for that location and received a decision on the application, but the plaintiffs have offered no evidence suggesting that they even considered alternative sites, such as sites that were not located in the downtown area.⁸ Moreover, the plaintiffs have offered no evidence from other would-be purveyors of erotic entertainment indicating that the [*23] City's licensing requirements prevented them from offering [*951] erotic entertainment within the city limits. To be sure, the plaintiffs point out that a fair number of applications for new erotic taverns were either denied or withdrawn between 2006 and 2010, but no context is given for those denials and withdrawals (other than those involving the plaintiffs' applications). For example, I have not been told where the

proposed taverns would have been located, whether the proposed licensees made reasonable efforts to find alternative locations, or whether the proposed licensees were qualified to hold tavern licenses in the first place. Thus, based on the present record, which includes the fact that a number of taverns featuring erotic dance entertainment operated within the city limits during the time period relevant to this suit—including one operated by the manager of the plaintiffs—I conclude that the City left open reasonable alternative avenues for presenting and consuming erotic dance entertainment.

The plaintiffs also contend that the tavern and tavern-amusement ordinances granted City officials "unbridled discretion" to determine whether to grant or deny such licenses. "Unbridled discretion" is a phrase that derives from prior-restraint cases involving censorship, see Southworth v. Bd. of Regents, 307 F.3d 566, 575-78 (7th Cir. 2002) (discussing history of unbridled discretion), but it has been applied in cases in which the prior restraint is analyzed as a time, place, or manner restriction, see Thomas v. Chicago Park Dist., 534 U.S. 316, 323, 122 S. Ct. 775, 151 L. Ed. 2d 783 (2002). However, in either kind of case, the concern behind the unbridled-discretion standard is censorship—a risk that the licensing authority will use its unduly broad discretion to favor or disfavor speech based on content. Id. The standard is usually applied in circumstances where the law at issue either explicitly involves censorship, such as the law governing the Maryland board of censors at issue in Freedman v. Maryland, 380 U.S. 51, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965), [*25] or when the law at issue presents a significant censorship risk, such as when a single person is granted power over a newspaper's ability to sell papers, see City of Lakewood v. Plain Dealer Pub'g Co., 486 U.S. 750, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988), or a single person is granted power to decide whether a group will be allowed to hold a rally in a public park, see Thomas, 534 U.S. at 323-24.

⁸ The plaintiffs have not argued that they have a right to offer erotic dance entertainment in the downtown area, as opposed to other areas within the city limits. Moreover, as I have already [*24] noted, "[c]ountless cases allow municipalities to zone strip joints, adult book stores, and like erotic sites out of residential and the classier commercial areas of the city or town." Blue Canary, 251 F.3d at 1124.

In the present case, the tavern and tavern-amusement licensing requirements did not explicitly involve censorship, and they did not present a significant censorship risk. As discussed, the purpose of the licensing requirements was not censorship but to ensure that a proposed form of tavern entertainment was basically compatible with the neighborhood in which it planned to locate. Moreover, it is difficult to envision a realistic scenario in which the Licenses Committee could have used its licensing power to favor or disfavor specific forms of expressive tavern entertainment. As the Seventh Circuit recognized in Blue Canary, the City of Milwaukee is a major city rather than a small town with a homogenous population that is likely to find certain forms of tavern expression offensive and to want to ban them from the City. 251 F.3d at 1124. [*26] Thus, there was never any realistic chance that the Licenses Committee would have used its licensing authority to facilitate a campaign to ban rock music, erotic dancing, or any other form of entertainment from the City's taverns. It is also important to take note of the procedural elements of the licensing ordinances, which required the Licenses Committee to hold a public hearing and make its recommendation to the Common Council in writing. See Milwaukee Code of Ordinances § 90-35-4-c; Stip. Facts ¶¶ 25-40, ECF No. 44. If the City's residents had found a particular form of tavern entertainment offensive and opposed [*952] a license application for that reason, and the Licenses Committee had recommended denial of the application for the same reason, those events would have been out in the open and could have been remedied through an as-applied challenge. This is in contrast to unbridled-discretion cases like City of Lakewood, in which the decisionmaker could have rendered an as-applied challenge ineffective by denying a license without holding a hearing or identifying the evidence on which he or she relied. 486 U.S. at 769. Thus, in the present case, the tavern and

tavern-amusement ordinances [**27] were not invalid on the ground that they vested decisionmakers with unbridled discretion.

The plaintiffs also argue that the tavern and tavern-amusement ordinances do not satisfy United States v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L. Ed. 2d 672 (1968). In that case, the Supreme Court held that a content-neutral regulation that has an incidental effect on expression satisfies the First Amendment if it meets a four-pronged test: "[1] if it is within the constitutional power of the Government; [2] if it furthers an important or substantial governmental interest; [3] if the governmental interest is unrelated to the suppression of free expression; and [4] if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." Id. at 377. Plaintiffs argue that the tavern and tavern-amusement ordinances did not satisfy the first prong of the O'Brien test—that the ordinances be "within the constitutional power of the Government"—and they give two reasons in support of this argument: (1) the ordinances were contrary to Chapter 125 of the Wisconsin Statutes, which relates to alcoholic beverages, and (2) the ordinances were de facto zoning regulations that [**28] were not passed pursuant to the state-law procedures that apply to zoning regulations. In making these arguments, the plaintiffs assume that O'Brien's first prong allows a court to examine whether a municipality complied with state law when passing the regulation at issue. However, I can find no authority that supports this assumption. O'Brien's first prong is rarely discussed, but there is no indication that it was meant to "constitutionalize" matters of state law.⁹ Rather, when courts apply O'Brien's first prong to a municipal regulation, they ask only whether the regulation at issue is of a kind that is within the "general police powers" of a municipality. See

⁹ Plaintiffs cite various cases in which courts reviewed municipal ordinances for compliance with state laws, but in none of those cases did the court purport to be applying the O'Brien test. Instead, it appears that the courts were adjudicating state-law claims. See, e.g., Ravenna Road Mgmt. v. City of Twinsburg, 450 F. Supp. 2d 782, 785-86 (N.D. Ohio 2006); Northshor Experience, Inc. v. City of Duluth, 442 F. Supp. 2d 713, 718-19 (D. Minn. 2006); Fifth Column v. Vill. of Valley View, 100 F. Supp. 2d 493, 507 (N.D. Ohio 1998); S. Entm't Co. of Florida v. City of Boynton Beach, 736 F. Supp. 1094, 1101-02 (S.D. Fla. 1990); City of Ann Arbor v. Danish News Co., 139 Mich. App. 218, 361 N.W.2d 772, 774-76 (Mich. Ct. App. 1984).

Ben's Bar, Inc. v. Vill. of Somerset, 316 F.3d 702, 722-23 (7th Cir. 2003). In the present case, there is no question that regulating the locations of taverns and the time, place and manner of tavern entertainment is within the general police powers of a municipality. *Id.* at 722 (holding that a municipality's "regulation of alcohol sales and consumption in 'inappropriate locations' is clearly within its general police powers"); *Blue Canary*, 251 F.3d at 1124. To the extent plaintiffs believe that the City failed to comply [**29] with state law when passing the specific ordinances at issue, they may have a claim against the City under state law. However, in the present case, the plaintiffs have brought [*953] no state-law claims and proceed only under 42 U.S.C. § 1983. See Fourth Amended and Supplemental Complaint ¶ 101, ECF No. 36. Thus, these matters of state law are not subject to review in this case.

Finally, Six Star argues that the City's decision to deny its license applications was "discriminatory" because the [**30] City ultimately granted tavern and tavern-amusement licenses for the Old World Third premises to another applicant, Robert Smith. Six Star contends that the only difference between its proposal and Smith's proposal was that Smith did not propose to offer erotic entertainment. That appears to be true, but as discussed, the City was allowed to base its decision on "the character of the entertainment" that Six Star intended to present and whether such entertainment was compatible with the normal activity of the neighborhood. *Blue Canary*, 251 F.3d at 1123. Here, the decision to permit Smith's tavern but exclude Six Star's gentlemen's club is explainable by the fact that the presence of an ordinary tavern in the neighborhood would not have deterred respectable retailers from moving in, whereas the presence of a gentlemen's club would have. Thus, the City's having granted tavern and tavern-amusement licenses for the Old World Third premises to a different applicant does not show that the decision to deny Six Star's applications for the same licenses was based on impermissible factors.

Accordingly, the City's motion for summary judgment on plaintiffs' claims involving the tavern and tavern-amusement [**31] ordinances will be granted.

B. Theater Ordinance

Former § 83-1-2 of the Milwaukee Code of Ordinances stated that "[n]o person, firm or corporation . . . shall keep, maintain, conduct or operate for gain or profit, any theater or moving picture house in the city without first obtaining a license therefore." Section 83-1-1-b defined "theater" as "any edifice, or parts thereof, used for the purposes of dramatic or operatic or other exhibitions, plays or performances for admission to which remuneration or any other consideration is paid, charged or received." Section 83-1-5-b stated that an application for a theater license "shall be granted when the following requirements are met: the building, structure or premises for which the license is sought must conform in all respects to the provisions of this section and to the law of this state and the ordinances of the city applying to such buildings, structures, or premises."

In September 2011, Six Star applied for a license to operate the Old World Third location as a theater called the Outer Limits Gentlemen's Club. The theater would have offered erotic dance entertainment but no alcohol. It is undisputed that, pursuant to a "hold" placed [**32] on Six Star's application by Alderman Bauman, no decision was ever made on Six Star's application. The theater ordinance was repealed effective March 1, 2012.

The plaintiffs claim that former Chapter 83 was unconstitutional on its face and was unconstitutionally applied to Six Star. I begin with Six Star's as-applied challenge, which hinges on the fact that the City dragged its heels and never reached any decision on the licensing application before repealing the theater ordinance.¹⁰ Numerous cases recognize that a licensing or permitting scheme that touches upon expression violates the *First* [*954] Amendment when it allows the government to unreasonably

¹⁰ The City argues that Six Star's claim against Chapter 83 is moot because that ordinance has been repealed. However, Six Star seeks damages for the period in which Chapter 83 prevented it from operating the Outer

delay or postpone a decision on whether to grant or deny a license. *See, e.g., City of Lakewood*, 486 U.S. at 771; *Freedman*, 380 U.S. at 57-58; *Vodak v. City of Chicago*, 639 F.3d 738, 749 (7th Cir. 2011); *Thomas*, 227 F.3d at 927-28. Here, the theater ordinance was a regulation governing the time, place, or manner of expressive activity—namely, "dramatic or operatic or other exhibitions, plays or performances," § 83-1-1-b. Thus, to defeat Six Star's as-applied challenge, the City must offer a legitimate explanation for its failure to render [*33] a prompt decision on Six Star's application to engage in such expressive activity at the Old World Third location.

The City's primary argument is that Six Star applied for the wrong kind of license. It contends that, in September 2011, the license required for offering erotic dance entertainment in an establishment that does not serve alcohol was the public entertainment club license required by Milwaukee Code of Ordinances § 108-5-1-a (2010). However, even if that were true, it would not have justified the City's failure to render a decision on Six Star's application. If the City believed that Six Star had applied for the wrong license, it should have denied the application on that ground. Then, if Six Star thought it had applied for the correct license, it could have challenged the City's decision [*34] in an appropriate legal action.

In any event, the facts in the record do not establish that Six Star applied for the wrong type of license. The public entertainment club ordinance required any person who wanted to offer "public entertainment" to obtain an

appropriate license or permit. Milwaukee Code of Ordinances § 108-5-1-a (2010). "Public entertainment" was defined as "any entertainment of any nature or description to which the public generally may gain admission, whether with or without the payment of a fee." *Id.* § 108-3-3. This definition included plays and other forms of entertainment that fell within the scope of the theater ordinance. However, one did not need both a theater license and a public entertainment club license to offer the kind of entertainment that fell within the scope of the theater ordinance. This was so because the public entertainment club ordinance stated that the holder of a theater license did not need to obtain a public entertainment club license. *Id.* § 108-5-2-c. Moreover, nothing in either ordinance indicated that an establishment that wanted to offer erotic dance entertainment could not have operated under a theater license instead of a public entertainment [*35] club license.¹¹ The repealed ordinances allowed Six Star to choose which type of license it wanted, and it chose to apply for a theater license. Accordingly, the City could not have denied Six Star's application for a theater license on the ground that Six Star should have applied for a public entertainment club license instead.¹²

[*955] Accordingly, because the City has offered no legitimate explanation for its failure to render a prompt decision on Six Star's application for a theater license, plaintiffs' motion for summary judgment on the issue of whether the theater ordinance was unconstitutionally applied to it will be granted. This result eliminates the need to address Six Star's facial challenge to the repealed ordinance.

Limits Gentleman's Club as a theater, and so its claim is not moot. *See Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health and Human Res.*, 532 U.S. 598, 608-09, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001).

¹¹ The City points out that, in 2010, the only establishments that held theater licenses under Chapter 83 were "traditional, commonly-defined theaters featuring fixed seating facing a permanent stage offering dramatic performances, plays and the like." *See* Pl's Resp. to City's PFOF ¶ 6, ECF No. 72. However, that fact is irrelevant, since there was nothing in Chapter 83 that required an establishment to conform to this description in order to obtain a theater license.

¹² The City also points out that, at the time Six Star applied for a theater license, Robert Smith was already operating his tavern at the Old World Third location. However, the City does not explain why that mattered. *See* City's Response Br. at 48-49, ECF No. 55. Apparently, Six Star had an agreement with Smith under which Smith would vacate the premises if Six Star had been able to obtain a license [*36] to operate as either a tavern or a theater. Nothing in Chapter 83 suggests that the City needed to know this in order to process Six Star's application for a theater license.

There is still the matter of Ferol's facial challenge to the theater ordinance. Ferol never applied for a license under Chapter 83. However, Ferol contends that because the theater ordinance was a prior restraint, it has standing to challenge the ordinance and to obtain damages. As a general matter, it is true that a plaintiff can bring a facial challenge to an allegedly unconstitutional licensing regulation without applying for a license. See City of Lakewood, 486 U.S. at 755-56. However, in the present case, the ordinance has been repealed, and Ferol's Article III standing depends on its having sustained damages as a result [*37] of Chapter 83's existence. Yet, the summary-judgment record contains no affidavit or other evidence indicating that Ferol had concrete plans to open a dry gentlemen's club (as opposed to a tavern) at the Pittsburgh Avenue location or any other location in the City of Milwaukee during the time that Chapter 83 was in force. Thus, I do not see how Ferol could have been damaged by the mere existence of Chapter 83, and so I am not satisfied that Ferol has standing to challenge Chapter 83 on its face. See Summers v. Earth Island Inst., 555 U.S. 488, 499, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009) ("it is well established that the court has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties"). Therefore, I will not adjudicate Ferol's facial challenge to Chapter 83 on the merits at this time. However, should Ferol believe that it can establish Article III standing, it may submit appropriate affidavits to that effect and I will reconsider this ruling.

C. Public Entertainment Club Ordinance

The remaining claims are the plaintiffs' facial challenges to the former public entertainment club ordinance, which appeared in Chapter 108 of the Milwaukee Code of Ordinances. [*38] As already discussed in the context of plaintiffs' claims involving the theater ordinance, Chapter 108 provided that no person could offer any form of public entertainment without obtaining either a public entertainment club license or a theater license. Having ruled that Six Star is entitled to damages in connection with its as-applied challenge to the theater ordinance, I do not need to separately consider Six Star's facial challenge to the public entertainment club ordinance, as

both claims involve the same pool of damages—namely, damages attributable to Six Star's inability to offer erotic dance entertainment without also serving alcohol at the Old World Third location. Moreover, because the record contains no affidavits or other evidence indicating that Ferol had any concrete plans to offer erotic dance entertainment without also serving alcohol at the Pittsburgh Avenue location or any other location during the time that the public entertainment club license was in force, I am not satisfied that Ferol has Article III standing to bring a facial challenge to the public entertainment club ordinance. See Summers, 555 U.S. at 499. Accordingly, I do not need [*956] to reach the merits of plaintiffs' [*39] facial challenges to Chapter 108 at this time. Again, if Ferol believes that it can establish Article III standing, it may submit appropriate affidavits and I will reconsider this ruling.

III. CONCLUSION

For the reasons states, **IT IS ORDERED** that plaintiffs' motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**, and that defendant's motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**. Summary judgment is granted to the City on plaintiffs' claims involving the tavern and tavern-amusement ordinances. Summary judgment is granted to Six Star on the issue of the City's liability for damages relating to Six Star's inability to offer erotic dance entertainment without also serving alcohol at the Old World Third location. I do not reach the merits of Ferol's claims involving the theater ordinance and the public entertainment club ordinance. If Ferol believes that it can prove that it suffered damages that are traceable to those ordinances, then it may attempt to do so during further proceedings.

IT IS FURTHER ORDERED that the parties' motions to file briefs that exceed the page limitations [ECF Nos. 48 & 54] are **GRANTED**.

FINALLY, IT IS ORDERED that an in-person status [*40] conference will be held on **April 11, 2013 at 10:30 a.m.** to discuss further proceedings.

Dated at Milwaukee, Wisconsin, this 18th day of March 2013.

/s/ Lynn Adelman

District Judge

LYNN ADELMAN

WAM DC LLC
c/o Mr. Stephen L. Chernof
Godfrey & Kahn, S.C.
780 North Water Street
Milwaukee, WI 53202

July 7, 2015

DELIVERED BY MESSENGER

The Honorable Anthony Zielinski, Chair
Members of the Licenses Committee
Common Council of the City of Milwaukee
200 East Wells St., Rm. 205
Milwaukee, WI 53202

RE: Boardroom Entertainment Mke, LLC

Dear Alderman Zielinski and Members of the Licenses Committee:

This letter is an objection by WAM DC LLC ("WAM") to the application of Boardroom Entertainment Mke, LLC ("Boardroom") to permit "adult entertainment/strippers/exotic dance" at 730 North Old World Third Street (the "Property"). WAM is an entity formed to spearhead the redevelopment of West Wisconsin Avenue from the river to Marquette, and is an outgrowth of an initiative proposed by Mayor Tom Barrett. Our constituents include major stakeholders in the area—people who are deeply committed to making our City in general, and our downtown in particular, an even better place.

WAM's goal is to revitalize the area by attracting residents in new housing, creating welcoming public spaces, locating significant new retail businesses along Wisconsin Avenue, and making sure that the public understands that West Wisconsin Avenue is safe and inviting. We have begun to see the fruits of our efforts with hundreds of new housing units under construction or planned on Wisconsin Avenue or in the immediate vicinity.

We believe that permitting adult entertainment/strippers/exotic dancer just off Wisconsin Avenue will significantly harm our efforts, would be incompatible with the revitalization effort and will be inconsistent with Milwaukee's Downtown Plan. It will send a strong signal to families that they are not welcome as residents or visitors, and it will do nothing to foster daytime commercial activity. It would not be in the best interests of the City, the residents of the area or the new businesses we hope to bring to the revitalization effort.

We respectfully request that the Licenses Committee deny Boardroom's application.

Respectfully submitted,

WAM DC LLC


Stephen L. Chernof

cc: Honorable Mayor Tom Barrett
Honorable Members of the Milwaukee Common Council
Office of the City Clerk-License Division
Commissioner Rocky Marcoux, Department of City Development

13939225.1

REDACTED RECORD

July 7, 2015

Honorable T. Anthony Zielinski, Chair and
Members of the Licenses Committee
City of Milwaukee, Common Council
200 E. Wells Street
Milwaukee, WI 53202

RE: Application of Robert F. Smith, agent for Boardroom Entertainment Mke, LLC - requesting to add
"...Adult Entertainment/Strippers/Erotic Dance"

Dear Chair Zielinski and Members of the Licenses Committee:

This letter is written to strongly encourage you to deny adding Adult Entertainment/Strippers/Erotic Dance to the Entertainment Premises License submitted by Robert F. Smith, Agt. Boardroom Entertainment Mke, LLC for Rusty's Old 50 at the premises located at 730 N. Old World Third Street.

has invested over \$60 million in real estate projects that are within one block of the proposed location to add adult entertainment/strippers/erotic dance.

visibility to this establishment.

these properties has

along with the investment of others such as the city of Milwaukee, Westown Association, WAM DC, NEWaukee, and several real estate developers, to revitalize Westown and West Wisconsin Avenue would be undermined by adding the proposed use to this establishment at this location. We do not oppose adult entertainment, strippers and/or exotic dance in itself, but we feel such uses should be located in an entertainment district. Adding this use to a downtown area that is already challenged with issues such as homelessness, panhandling and loitering will not be beneficial to the overall community. It is our belief that the requested uses at this particular premise will negatively impact rental income and consequently property values, make it more difficult to attract and retain quality office and retail tenants and encourage young professionals to live, work and play in this area.

Again, we request that you deny adding Adult Entertainment/Strippers/Erotic Dance to the Entertainment Premises License at 730 N Old World Third Street because it does not benefit the health, safety and welfare of the public and our neighborhood.

Sincerely,



Friday, September 11, 2015



Notice of Public Hearing

SMITH, Robert F, Agent
Rusty's Old 50 at 730 N Old World Third St
Class B Tavern and Public Entertainment License Renewal Applications, Adding Adult
Entertainment, Strippers, Erotic Dancing, Patrons Dancing, and Dancing by Performers

Thursday, September 17, 2015 at 1:00 PM

To whom it may concern:

The above application has been made by the above named applicant(s). This requires approval from the Licenses Committee and the Common Council of the City of Milwaukee. The hearing before the Licenses Committee will take place on 9/17/2015 at 1:00 PM, in Room 301-B, Third Floor, City Hall. If you wish, you may provide testimony at the hearing regarding the request; see below for further information. You are not required to attend the hearing. Once the Licenses Committee makes its recommendation, this recommendation is forwarded to the full Common Council for approval at its next regularly scheduled hearing. Please review the information below and if you have further questions regarding this process, please contact the License Division at (414) 286-2238.

Important details for those wishing to provide information for the Licenses Committee to consider when making its recommendation:

1. The license application is scheduled to be heard at the above time. Due to other hearings running longer than scheduled, you may have to wait some time to provide your testimony.
2. You must appear in person and testify as to matters that you have personally experienced or seen. (You cannot provide testimony for your neighbor, parent or anyone else; this is considered hearsay and cannot be considered by the committee.)
3. No letters or petitions can be accepted by the committee (unless the person who wrote the letter or the persons who signed the petition are present at the committee hearing and willing to testify).
4. Persons opposed to the license application are given the opportunity to testify first; supporters may testify after the opponents have finished.
5. When you are called to testify, you will be sworn in and asked to give your name, and address. (If your first and/or last names are uncommon please spell them.)
6. You may then provide testimony.
 - a. Include only information relating to the above license application.
 - b. Include only information you have personally witnessed or seen.
 - c. Provide concise and relevant information detailing how this business has affected or may affect the peaceful enjoyment of your neighborhood.
 - d. If by the time you have the opportunity to testify, the information you wish to share has already been provided to the committee, you may state that you agree with the previous testimony. Redundant or repetitive testimony will not assist the committee in making its recommendation.
7. After giving your testimony, the members of the Licenses Committee and the licensee may ask questions regarding the testimony you have given or other factors relating to the license application.
8. Business Competition is not a valid basis for denial or non-renewal of a license.
Please Note: If you have submitted an objection to the above application your objection cannot be considered by the committee unless you personally testify at the hearing.



Friday, September 11, 2015



Notice of Public Hearing

SMITH, Robert F, Agent

Rusty's Old 50 at 730 N Old World Third St

Class B Tavern and Public Entertainment License Renewal Applications, Adding Adult Entertainment, Strippers, Erotic Dancing, Patrons Dancing, and Dancing by Performers

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8. Business Competition is not a valid basis for denial or non-renewal of a license.
Please Note: If you have submitted an objection to the above application your objection cannot be considered by the committee unless you personally testify at the hearing.

[illegible]

[illegible]

[illegible]

CURRENT RESIDENT	734 N OLD WORLD 3RD ST 57	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 58	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 59	MILWAUKEE, WI 53203-2210

Total Records: 144

Radius: 250.0 feet and Center of Circle: 730 N Old World Third ST

2015-2016 Plan of Operation for 730 N OLD WORLD THIRD ST

1. Litter and Noise

How are the grounds kept clean? ☒ Sweep ☒ Pressure Wash ☒ Pick Up Litter ☐ Other: _____

How often will grounds be cleaned? ☒ Daily ☐ Weekly ☐ Other: _____

Grounds Cleaned By: ☒ Licensee ☒ Building Owner ☒ Employees ☒ Hired Maintenance ☐ Other: _____

How are noise issues prevented and/or addressed? ☒ Security ☒ Manager approaches customer(s) ☐ Call Police

☒ Signs Posted ☐ Other: _____

2. Smoking and Sanitation

Are there designated outdoor smoking areas? ☐ No ☒ Yes

If yes, describe the area(s) and provide location(s): IN FRONT patio area

Number of Garbage Cans: Inside: 6 Locations: Behind Bar, main Room, by Door's Exits
Outside: 1 Locations: _____

Is a Crowd Control Barrier used? ☒ No ☐ Yes If yes, describe: _____

Describe sanitation facilities (restrooms): 1-men 1-woman's

Provide name of solid waste contractor: WASTE management

3. Security

Are there parking spaces on the premises? ☒ No ☐ Yes If yes, number of spaces: _____ and describe security provisions: _____

Are there designated loading areas? ☒ No ☐ Yes If yes, describe security provisions: _____

Do you have security personnel on the premise? ☐ No ☒ Yes If yes, how many? 2-4

AND What are their responsibilities? watch over customer's check ID'S

What security equipment do they use? Flash Light, Radio, scanner for ID'S

List their licensing, certification or training credentials: Trained by H&M or Management or School

Are there security cameras? ☐ No ☒ Yes If yes, list all locations: Bar's Entrance & OUT SIDE AROUND Building

Are searches and/or identification checks conducted upon entry? ☐ No ☒ Yes If yes, describe: ALL ID'S checked

4. Percentage of Sales (must total 100%)

Alcohol 90 % Food Sales 10 % Entertainment _____ % Other _____ %

5. Businesses On The Premise (choose all that apply):

- | | | | |
|--|--|--|---|
| <input type="checkbox"/> Full Service Restaurant | <input type="checkbox"/> Cafe/Coffee Shop | <input type="checkbox"/> Deli or Fast Food Rest. | <input type="checkbox"/> Private/Fraternal/Veterans' Club |
| <input type="checkbox"/> Night Club | <input checked="" type="checkbox"/> Tavern | <input type="checkbox"/> Cocktail Lounge | <input type="checkbox"/> Teen Club |
| <input type="checkbox"/> Bowling Alley | <input type="checkbox"/> Hotel | <input type="checkbox"/> Banquet Hall | <input type="checkbox"/> Sports Facility |
| <input type="checkbox"/> Liquor Store | <input type="checkbox"/> Corner Store | <input type="checkbox"/> Supermarket | <input type="checkbox"/> Convenience Store |
| <input type="checkbox"/> Gas Station | <input type="checkbox"/> Other _____ | | |

6. Hours of Operation and Age Restriction

Are there any changes to the current hours of operation or age restriction? ☒ No ☐ Yes If yes, describe: _____

Please Note: If you will be open earlier or later than the hours listed on your current license for even one event or holiday (for example, St. Patrick's Day, Brewers Opening Day, etc.) during the license period, this must be reported and printed on your license.

Your hours of operation and age restriction are listed on your current license.

7. Floor Plan

Are there any changes to the current floor plan? ☒ No ☐ Yes If yes, describe: _____

AND submit a new floor plan with this application. Changes in floor plan include changing the location of tables, games, etc. within your current licensed premises. If your changes include adding any additional areas or square footage to your premises, or any renovations to the building will be done, a Permanent Extension of Premises application must be filed.

PUBLIC ENTERTAINMENT PREMISES RENEWAL SUPPLEMENTARY APPLICATION

CCL-PEP3 2/18/15

(1) CURRENT ENTERTAINMENT

The following types of entertainment have been approved for your current Public Entertainment Premises license:

Bands, Disc Jockey, Karaoke, 2 Amusement Machines, 1 Pool Table

(2) SELECT ANY TYPES OF ENTERTAINMENT THAT YOU ARE REQUESTING TO ADD *No changes in entertainment shall take place until approved by the Common Council and a new license has been issued and posted on the premises.

<input type="checkbox"/> Instrumental Musicians	<input type="checkbox"/> Bands	<input type="checkbox"/> Battle of the Bands	<input type="checkbox"/> Comedy Acts
<input type="checkbox"/> Disc Jockey	<input type="checkbox"/> Magic Shows	<input type="checkbox"/> Poetry Readings	<input checked="" type="checkbox"/> Dancing by Performers
<input type="checkbox"/> Jukebox	<input type="checkbox"/> Wrestling	<input type="checkbox"/> Patron Contests	<input checked="" type="checkbox"/> Patrons Dancing
<input checked="" type="checkbox"/> Adult Entertainment/ Strippers/Erotic Dance	<input type="checkbox"/> Karaoke	<input type="checkbox"/> Bowling Alley	<input type="checkbox"/> Pool Tables
<input type="checkbox"/> Motion Pictures	<input type="checkbox"/> Amusement Machines –	How many? _____	How many? _____
How many screens? _____	How many? _____	<input type="checkbox"/> Concerts	<input type="checkbox"/> Theatrical Performances
		Approx. # per year? _____	Approx. # per year? _____
<input type="checkbox"/> Other: _____			

(3) REMOVE ENTERTAINMENT

If applicable, list any entertainment you wish to remove: _____

(4) WILL PROMOTERS EVER BE USED FOR ANY OF THE ENTERTAINMENT?☒ No ☐ Yes, describe: _____**(5) LEGAL CAPACITY OF PREMISES**

216 (Call the Milwaukee Development Center at 414-286-8211 if you have questions.) Your legal capacity will determine the license fee for your Public Entertainment Premise License. If you would like to request that the license be approved with a lower capacity than that listed above, indicate lower capacity _____. If approved, this lower capacity will print on your license and override the capacity listed on your Occupancy Permit.

(6) IDENTIFY IF SOUND AMPLIFICATION IS USED☐ No ☒ Yes, describe: Speaker's Amp's**(7) DECLARATIONS, ACKNOWLEDGEMENTS, & DISCLOSURES**

Read And Initial Each Item Confirming Your Understanding:

- LS I understand that after the license has been issued, a change to the plan of operation will require a written request to change and approval from the Common Council.
- RA I agree to inform the City Clerk within 30 days of any substantial changes in the information supplied in this application.
- 21 I understand that I shall not willfully refuse to provide the services offered under this license, or add charges or require deposits not required of the general public because of race, color, sex, religion, national origin or ancestry, age, handicap, lawful source of income, marital status, sexual orientation, gender identity or expression, familial status or the fact that a person is now or has been a member of the military service, whether dressed in uniform or not; and shall not seek such information as a condition of employment, or penalize any employee or discriminate in the selection of personnel for training or promotion on the basis of such information.
- RA I have knowledge of the City Ordinances currently regulating public entertainment, and understand that the license may be subject to suspension, non-renewal or revocation if I violate any rule, law or regulation of the city of Milwaukee and State of Wisconsin.

(8) NOTARIZED SIGNATURES OF APPLICANTS

SUBSCRIBED AND SWORN TO BEFORE ME

This 31st day of August, 20 15

[Signature]
(Clerk/Notary Public)

My Commission Expires MARCH 23, 2019

[Signature]
Agent/Owner/Partner

Additional Owner/Partner

*Notary Seal must be affixed.



**CITY OF MILWAUKEE
OFFICE OF THE CITY CLERK**

Friday, September 11, 2015

COMMITTEE MEETING NOTICE

AD 04

BUZDUM, Dusanka, Agent
Boardroom Entertainment Mke, LLC
730 N Old World Third St

Milwaukee, WI 53203

You are requested to attend a hearing which is to be held in Room 301-B, Third Floor, City Hall on:

Thursday, September 17, 2015 at 01:00 PM

Regarding: Your Class B Tavern and Public Entertainment Licenses Transfer - Change of Agent, and Requesting to Add Dancing by Performers, Comedy Acts, 11 Concerts, Patrons Dancing, Jukebox, and Adult Entertainment/Strippers/Erotic Dancing as agent for "Boardroom Entertainment Mke, LLC" for "Rusty's Old 50 " at 730 N Old World Third St.

There is a possibility that your application may be denied for one or more of the following reasons: The recommendation of the committee regarding the application shall be based on evidence presented at the hearing. Per MCO 85-2.7-4, probative evidence concerning whether or not a new license should be granted may be presented on the following subjects: whether or not the applicant meets the municipal requirements, the appropriateness of the location and premises where the licensed premises is to be located and whether use of the premises for the purposes or activities permitted by the license would tend to facilitate a public or private nuisance or create undesirable neighborhood problems such as disorderly patrons, unreasonably loud noise, litter, and excessive traffic and parking congestion. Probative evidence relating to these matters may be taken from the plan of operation submitted with the license application, if any, but shall not include the content of any music. Evidence regarding the fitness of the location of the premises to be maintained as the principal place of business, including but not limited to whether there is an overconcentration of businesses of the type for which the license is sought; whether the proposal is consistent with any pertinent neighborhood business or development plans, or the location's proximity to areas where children are typically present. The applicant's record in operating similarly licensed premises; and whether or not the applicant has been charged with or convicted of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the activity to be permitted by the license being applied for or any other factor which reasonably relates to the public health, safety or welfare may also be considered. See attached police report or correspondence.

<u>Notice for applicants with warrants or unpaid fines:</u>	Proof of warrant satisfaction or payment of fines must be submitted at the hearing on the above date and time. Failure to comply with this requirement may result in a delay of the granting/denial of your application.
--	--

Failure to appear at this meeting may result in the denial of your license. Individual applicants must appear only in person or by an attorney. Corporate or Limited Liability applicants must appear only by the agent designated on the application or by an attorney. Partnership applicants must appear by a partner listed on the application or by an attorney. If you wish to do so and at your own expense, you may be accompanied by an attorney of your choosing to represent you at this hearing.

You will be given an opportunity to speak on behalf of the application and to respond and challenge any charges or reasons given for the denial. No petitions can be accepted by the committee, unless the people who signed the petition are present at the committee hearing and willing to testify. You may present witnesses under oath and you may also confront and cross-examine opposing witnesses under oath. If you have difficulty with the English language, you should bring an interpreter with you, at your expense, so that you can answer questions and participate in your hearing.

You may examine the application file at this office during regular business hours prior to the hearing date. Inquiries regarding this matter may be directed to the person whose signature appears below.

Limited parking for persons attending meetings in City Hall is available at reduced rates (5 hour limit) at the Milwaukee Center on the southwest corner of East Kilbourn and North Water Street. Parking tickets must be validated in the first floor information booth in City Hall.

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request this service, contact the Council Services Division ADA Coordinator at (414) 286-2998, Fax - (414) 286-3456, TDD - (414) 286-2025.

JIM OWCZARSKI, CITY CLERK

BY: _____

Jason Schunk
License Division Manager

If you have questions regarding this notice, please contact the License Division at (414) 286-2238.

200 E. Wells Street, Room 105, City Hall, Milwaukee, WI 53202. www.milwaukee.gov/license
Phone: (414) 286-2238 Fax: (414) 286-3057 Email Address: License@milwaukee.gov

MILWAUKEE POLICE DEPARTMENT
LICENSE INVESTIGATION UNIT

CRIMINAL RECORD/ORDINANCE VIOLATION/INCIDENTS
SYNOPSIS

DATE: 09/02/2015
LICENSE TYPE: BTAVN
NEW:
RENEWAL: X

No. 217161
Application Date: 09/01/2015
Expiration Date:

License Location: 730 N Old World Third Street
Business Name: Boardroom Entertainment

Aldermanic District:

Licensee/Applicant: SMITH, Robert F
(Last Name, First Name, MI)
Date of Birth: 12/06/1968

Home Address: 212 E Mineral St
City: Milwaukee
Home Phone: (414) 649-9999

State: WI **Zip Code:** 53204

This report is written by Police Officer Gilbert Gwinn, assigned to the License Investigation Unit, Days.

The Milwaukee Police Department's investigation regarding this application revealed the following:

1. On 10/24/2004 at 2:15 AM the applicant was cited for Disorderly Premises Prohibited at 906 S Barclay St. No further information.

Charge : Disorderly Premises Prohibited
Finding : Guilty, Municipal Court
Sentence : Fined \$354.00
Date : 12/14/2004
Case : 04126492

2. On 06/13/08 at 11:24 pm, Milwaukee police observed a large crowd at Club Rain waiting to enter the club. Police spoke to a security guard who stated there was going to be problems because of the long line of patrons waiting to enter the club. Police observed about 70 patrons around the block waiting to enter the club. Police made several attempts to disperse the crowd with patrons becoming angry. One subject became unruly and was taken into custody. Due to the amount of people and the crowd becoming unruly, more squads were requested. Officers later spoke to Patsy Smith who stated they couldn't allow any more patrons in due to capacity. Citations were issued to Robert Smith, the licensee, for Disorderly Premises and Licensing-Change in Entertainment. A meeting was suggested to Smith to discuss recent incidents before something serious occurred. On 06/25/08 Smith went to District # 2 to discuss the concerns of Club Rain with district officers. Robert Smith was unable to attend however did contact officers later that day.

Charge: Change in Entertainment Notice Required
Disorderly Premises
Finding: Guilty
Dismissed w/o prejudice
Sentence: Fined \$100.00
Date: 10/03/08
Case: 08081739
08081738

3. On 09/17/2004 the applicant was cited in the city of Milwaukee for B & Z Violations at 906 South Barclay Street.

Charge: B & Z Violations
Finding: Guilty
Sentence: \$220.00 fine
Date: 07/05/2005
Case: 04125787

4. On 09/18/2007 the applicant was cited in the city of Milwaukee for Building Code Violations at 212 East Mineral Street.

Charge: Building Code Violations
Finding: Guilty
Sentence: \$300.00 fine
Date: 10/08/2009
Case: 09018901

5. On 08/15/2008 the applicant was cited in the city of Milwaukee for Building Code Violations at 906 South Barclay Street.

Charge: Building Code Violations
Finding: Guilty
Sentence: \$580.00 fine
Date: 07/21/2009
Case: 09008677

6. On 11/22/2008 at 12:40am Milwaukee Police were dispatched to a fight at 906 South Barclay Street (Rain Night Club). Investigation revealed a fight had occurred between patrons inside the bar. The applicant was on scene at the time this incident occurred and was issued three citations:

Charge 1: Presence of Minor at Licensed Premises (two counts)
2: Disorderly Premises Prohibited
Finding 1: Guilty
2&3 Dismissed without prejudice
Sentence : \$250.00 fine
Date : 08/31/2009
Case 08153636/08153638/08153637

=====

7. On 03/03/12 at 1:00 am, Milwaukee police conducted a License Premise Check at 730 N Old World Third Street. Investigation found numerous underage patrons inside the bar who were trying to leave the establishment. Officers confirmed 72 underage patrons and who were not with any parent or guardian. Police spoke with Robert F Smith, the licensee, who had no explanation for the large number of underage patrons inside his tavern. A total of 60 citations were issued for Possession/Consumption of Alcohol 17-20, 10 citations for Presence of Underage/Minor, 5 for Misrepresenting Age, and 4 for Obstructing Issuance of Citation. Police were on scene for 3 hours and had to ask the bar staff several times to stop serving while police were investigating.
8. On 03/16/12 at 4:30 pm, members from District one and the License Investigation Unit met with Robert Smith and his attorney, Vincent Bobot in regards to large amounts of patrons who were underage and found inside 730 N OWT Street, Boardroom. An investigation found that 72 citations were issued one night with many of the ID's from out of state. Mr. Smith stated he was embarrassed by this incident and provided suggestions of improvements that included using an ID scanner, changing cameras and using a height measurement to check against ID information. Mr. Smith also provided a typed security measure plan and a suggestion was made that Smith should required a Wisconsin state ID, as most students need to change their addresses to a local one in order to vote. Police personnel provided other suggestions to Smith and advised him that if problems persist, uncover surveillance would be conducted.

9. On 11/24/12 at 1:36 am, Milwaukee police were dispatched to 730 N. Old World Third Street for an Underage Persons complaint. Upon arrival, officers were posted at the entry door and the rear door to ensure that no one would exit from the rear door. Investigation found eight patrons who were underage and also found that the bar's license had not been posted, only an invoice. No licensed manager was on scene. All underage patrons were cited and released.

10. On 03/03/2012 the applicant was cited at 730 North Old World Third Street in the city of Milwaukee for Presence of Minor at Licensed Premises.

Charge: Presence of Minor at Licensed Premises
Finding: Guilty
Sentence: \$1000.00 fine
Date: 07/16/2012
Case: 12046417

11. On 01/14/2015 Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). Several violations were observed and discussed with the applicant. These included not having the certificate of occupancy or food dealers license posted, and not having an ID scanner at the location. The applicant told the officers he was in the process of changing the listed agent for the business but would not elaborate.

12. On 01/21/2015 at 10:42pm, Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). Officers observed several young ladies inside the business that identified themselves as independent contractors that danced at the bar, but received only tips as compensation. Some of the dancers wore see through garments, thong underwear and "pasties". The applicant, Robert Smith, along with Radomir Buzdum and Timothy Miller were on scene. Buzdum told officers he had been informed by his attorney that the dancing was allowed because the dancers were independent contractors and not employees of the business. The applicant stated the women were wearing clothing similar to other women that attend clubs in Milwaukee. Miller stated he was asked by Radomir Buzdum to help at this location. Miller is a general manager at TNT Gentleman's club in Watertown.
13. On 01/22/2015 at 10:53pm, Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). Upon entering officers observed a female dancing on a stage wearing a dress with horizontal slits on both sides. The dancer had her dress pulled below her breasts which were covered with pasties. Upon observing the police the dancer pulled her dress up. Officers also observed several other young ladies inside the business that identified themselves as dancers at the bar. These dancers were observed wearing various articles of underwear and bras and/or "pasties". Officers located a room off the kitchen that was being used by the dancers as a dressing room, which was equipped with lockers. The applicant, Robert Smith along with Radomir Buzdum and Timothy Miller, were on scene. All three received citations for violations observed on 01/22/2015 as well as citations for violations observed the previous night (01/21/2015). On 01/23/2015, at 1:50am, Milwaukee police conducted follow up at 730 North Old World Third Street (Rusty's). The follow-up was regarding a female who had provided false identification during an interview. The subject had initially identified herself as Quiana Monre, but later told officers her real name was Azaria Wilder. During this encounter, officers observed a young lady dancing on a stage near the entrance wearing only underwear and high heels. The dancer had her breast exposed without pasties. The dancer got off the stage and ran to the back of the location.

As to the applicant:

Charge	1:	Public Entertainment Premises License Required
	2:	Public Entertainment Premises License required (violation date 01/21/2015)
Finding	1:	Not guilty
	2:	Not guilty
Sentence	:	
Date	:	08/24/2015
Case	:	15007754
	:	15007755

As to Radomir Buzdum:

Charge	1:	Public Entertainment Premises License Required
	2:	Public Entertainment Premises License required (violation date 01/21/2015)
Finding	1:	Dismissed without prejudice
	2:	Dismissed without prejudice
Sentence	:	
Date	:	06/04/2015
Case	1:	15007744
	2:	15007745

As to Timothy Miller:

Charge	1:	Public Entertainment Premises License Required
	2:	Public Entertainment Premises License required (violation date 01/21/2015)
Finding	1:	Dismissed without prejudice
	2:	Dismissed without prejudice
Sentence	:	
Date	:	06/04/2015
Case	1:	15007751
	2:	15007750

14. On 01/24/2015 Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). Officers observed that the stage with a vertical pole that had been in the southwest corner of the business, had been removed. No dancing was observed. Two females were observed wearing bikini type outfits with the rest of the females dressed in normal casual clothing.
15. On 01/24/2015 Milwaukee police conducted a licensed premise check at 730 North Old World Third Street (Boardroom Entertainment). During this check, several people admitted to officers that they smoked in the basement of the business. All females inside the business were wearing "club" type clothing (skirts, shorts, cropped shirts and bikini tops).
16. On 01/25/2015 a Milwaukee police officer filed a PA33 regarding a conversation he had with Radomir Buzdum on 01/21/2015. During this conversation, Buzdum told the officer that he has dealt with other municipalities regarding licensed premises throughout the state. Buzdum stated that he has sued other communities over the adult entertainment license and every time he and the city have compromised or reached a settlement. He explained that he would sue for a large sum of money and ask for full nudity. In an effort to resolve the lawsuit, the municipality would counter with a requirement of bikini tops and bottoms and ultimately they would settle for "pasties" on top and thongs on the bottom. Buzdum said it was a revolving cycle and this was just the way he would have to play it.
17. On 04/19/2015 Milwaukee police responded to 730 North Old World Third Street (Rusty's Old 50) for a loud music complaint. Officers observed approximately 10 patrons inside the business which appeared to operating as a normal tavern.

This report is being submitted by PO Xavier BENITEZ assigned to District 1, Power Shift. On Wednesday January 21, 2015 at 10:42pm, a license premise check was conducted by police officers at 730 N. Old World Third St (Boardroom Entertainment MKE) the officer's on scene were Sgt. Davis LIGAS (sq 1413), PO Raymond BOGUST, PO Alberto FIGUEROA (sq 1460), PO Corstan COURT, and myself (sq 1440).

Upon entering the establishment I observed a black female, later identified as Cherrelle C. ANDERSON (f/b 05-02-88 of 4368 N. 28th St ph# 254-3876) dancing on a stage, wearing a red see through lingerie garment, with black thong underwear, and black "pasties" covering her areolas, which could be observed through the lingerie I observed a white male customer sitting on chair near the stage .

Premise Description

The tavern is located on the south side of a multi-family apartment building and through the main entrance/exit doors the main bar that was in use was located in the north west corner, with a bartender behind the bar working. Across the main bar, was the stage area (with a vertical pole for dancing) located at the southwest corner. I continued to walk east through the premises and observed a large back bar area not in use in the south east corner. Sitting at the bar were two white females, later identified by other officers and interviewed. I then walked to a side room on the north wall, there I observed two females, later identified as Emily L. BELLOVARY (f/w 10-18-91 of N4574 County Rd E Hustisford WI 53034 ph # 920 253-6189) and Rosetta SORRLES-JOHNSON (f/b 06-05-80 of W305N6545 Beaver RD, Hartland WI 53029 ph# 414 339-2518) BELLOVARY was observed wearing a gold colored thong and putting back on her gold glittered top back on with flesh colored "pasties" covering her areolas. SORRLES-JOHNSON was observed walking out of the room wearing a yellow trimmed top and bottom with blue/green, holding the hand of an older male white customer. In the back room I observed chairs displayed out on the perimeter of the room, and two curtained areas with a chair in the middle of each area. Continuing east along the north wall were the bathrooms. Along the southeast wall led to an employee only area. The area had the kitchen and a room designated for self employed dancers, as well as a back exit not used by customers.

Interviews

I then spoke with Cherrelle C. ANDERSON, who stated that she is employed as an independent contractor. ANDERSON stated that she is usually paid by tips from people while she is dancing. ANDERSON stated that the manager Brad hired her.

I then spoke to Emily L. BELLOVARY, who sated that she volunteered to work and works at TNT Gentleman's Club (located at N866 County Rd R Watertown WI 53098 Ph# 920-925-3222) as a self-employed dancer. BELLOVARY stated that she is usually paid in tips by dancing or if it is a slow night the manger compensates them. BELLOVARY was hired to dance by Brad the manager.

I then spoke to Stacy A. THORMAN (f/w 07-14-83 of N6975 Saucer Dr Watertown WI 53094 ph# 262 370-5997) who I observed in the back room for the dancers. THORMAN was observed wearing a black robe seated on a chair. THORMAN stated that Tim Miller of TNT hired her. THORMAN is paid to dance by tips from customers.

End of interviews.

PO COURT and PO BOGUST will file additional supplement reports regarding their part of the premise check. During the course of the premise check PO FIGUEROA was recording the investigation on a video camera, for documentation purposes.

This report is submitted by P.O. BOGUST assigned to District One, Power Shift, and squad 1460. On 01/21/15, at 10:42 PM I assisted in a tavern check at 730 N Old World 3rd ST. Upon entering the establishment I noticed several women in lingerie type clothing. I observed a white female standing at a table located half way thorough the bar along the North wall. She was wearing a white bra and multi color panties along with black high heel shoes. She was identified as JANUS, Sarah M (w/f 07/30/86) While interviewing JANUS she stated she was employed as an independent dancer and she also works at TNT in Watertown. I asked what her job was and she stated a cocktail waitress and dancer.

I proceeded to the back of the establishment in the back of the building and observed a second white female Michelle L HIGGINS, w/f 12-22-93, wearing a white bra with a leopard print skirt along with black high heels. When questioned she also stated that she's employed as an independent dancer.

The last person I interviewed was the bartender PROFFIT, Stephen T (w/m 08/25/76) when I asked to see his bartending license he stated that he didn't have one for Milwaukee, but was working under managers license

This report is typed by P.O. Corstan D. COURT assigned to the First District - Late Power Shift. On 01-21-2015 at 10:43 pm, Squad 1440, P.O.'s COURT and Xavier BENITEZ, along with Squad's, 1413 (Sergeant David LIGAS) and Squad 1460 (P.O.'s Raymond BOGUST and Alberto FIGUEROA) performed a license premise check at 730 N. Old World Third Street (Boardroom Entertainment MKE). Upon entering the establishment (where there was no cover charge), I was met by the licensed agent, Robert F. SMITH, and another subject, Identified as Radomir BUZDUM, w/m 11-24-1959, (N9661 BOJE CT, Watertown, WI 53094, 920-248-3360) who were standing by the bar which was located in the northwest part of the building.

I interviewed BUZDUM, who stated that his sister is a co-owner of the business and he is "over-seeing" the daily operation of the tavern. I asked him about the woman who was dancing on the stage, which was located on the southeast corner of the tavern, and he said that they were all independent contractors and worked for tips alone. Since they were not employed by the business, BUZDUM said that his attorney told him that they were allowed to dance for customers. When asked about their costumes, he relayed to me that there was nothing illegal about their dress because they were wearing bikini tops, with pasties underneath, and bikini and/or skirt bottoms. BUZDUM said that he has been in close contact with his attorney about this situation and everything he is doing is in compliance with the tavern license. BUZDUM had no further information.

I interviewed SMITH who stated that he is the agent, reiterated what BUZDUM said, and told me that the women inside the tavern are wearing nothing different from what you might see at the clubs in Milwaukee on a weekend night. SMITH had no further information.

The tavern manager, Timothy J. MILLER, w/m 12-20-71, (N866 County Road R, Watertown, WI 53098, 920-253-6391, said that he is an employee of the establishment and is a new hire. He works as the general manager at TNT Gentleman's Club in Watertown Wisconsin and was asked by BUZDUM to help at this current location. MILLER had no further information.

I interviewed one of the dancer's, Yuliya A MAMAYEVA, w/f 02-06-89, (6103 N. Green Bay Avenue, Glendale, WI 53209, 262-888-0579) who said that she is a self-employed dancer who was hired by "Brad" (BUZDUM) to work tonight. She receives no money from the tavern and works on tips only. MAMAYEVA had no further information. At the time of the interview, she was wearing a black, blazer style, and women's jacket with a black bra underneath and black women's briefs.

Jean S. BOIS, w/f 11-23-83, (N48W28966 County Road JK, Hartland, WI 53092, 262-527-8271, was interviewed by myself and she stated that she is a self employed dancer who works on commission. She was asked by MILLER to work in the tavern tonight but did not receive any money from him. BOIS knows MILLER because she has performed at TNT Gentleman's Club where MILLER is the manager. BOIS had no further information. At the time of the interview, BOIS was wearing a black bikini top and a silver mini skirt.

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC

Address of Licensed Premises: 730 NOW 3rd St

Business Phone: 414-350-6463

Type of License: Btavern

District: 1

☐ Violation / ☒ Incident # Tavern Check

Date of Incident: 01/14/2015

Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (if no, explain in narrative section)

Licensee Notified by Officer: P.O. Robert FERRELL

Date: 01/14/2015

Time: 23:55

Licensee or Agent's Name: SMITH, Robert F

Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968

Home Phone: 414-350-6463

Co-Licensee Name: Unknown

Home Address:

Class S License Number:

Date of Birth:

Home Phone:

Bartender Name:

Home Address:

Class D License Number:

Date of Birth:

Home Phone:

Licensed Person / Public Pass. Vehicle, etc.:

Home Address:

Class D License Number:

Date of Birth:

Home Phone:

VIOLATION/INCIDENT – DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Investigating Officer: PO Robert FERRELL

District / Bureau: 14

Date: 01/14/2015

Commanding Officer

Date

DISPOSITION – FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date

LICENSE INVESTIGATION UNIT

Received

Referred

By

This report is written by P.O. Robert FERRELL, District One, Power Shift, Sq 1430.

On Wednesday, January 14th, 2015, at approximately 23:00 Sq 1430 (P.O. Adam BRADLEY and I) performed a tavern check at 730 N. Old World 3rd St, Boardroom Entertainment MKE, LLC, accompanied by Sq 1411 (Sgt. Thomas ACKLEY), 1413 (Sgt. David LIGAS), and Sq 1440 (P.O. Corstan COURT/ P.O. Sean McCORD).

Upon entering the tavern I was met by the listed licensee Robert F SMITH, who recognized me from previous encounters. SMITH complied with my request to view all pertinent licenses, and capacity placard. Upon viewing licenses, I found all licenses related to class B tavern, with three bartender licenses posted. Missing were certificate of occupancy, and food dealers license required to run his kitchen at the tavern. I inquired about this as his application for renewal noted that 10% of his sales would be from food.

At this time SMITH told me he didn't have one and only planned on making frozen pizzas. SMITH stated that he didn't believe he needed a food dealer's license for that. I informed him that any food prepared out of the kitchen for sale, would require a food license and inspection of the kitchen from the Health department before he could operate any food sales from the tavern. SMITH informed me he thought I was wrong on this, but would check for himself, at a later time.

I inquired about the ID scanner mentioned in his application, SMITH told me it was not on scene. When asked about how he would verify age, I was told the bartenders were responsible for carding. When questioned about what type of training he would provide his employees in spotting fake/misused ID's. SMITH stated they would rely on the card reader, with no plans of additional training. SMITH also mentioned having a new financial partner, and trying to have the listed agent for the tavern changed. When asked about his new partner SMITH refused to elaborate and changed the topic, asking who the current Captain of District One was.

The tavern was only occupied by approximately 10 people who were all seated at the west bar. The overall layout of the tavern is the same as the old tavern, minus the old pick up truck in the middle of the floor. With two large bars inside one in front, one in the rear. On the north wall were sitting booths, with curtains which could be drawn shut to enclose the booth. The taverns kitchen is located in the rear of the tavern, and appeared to be operational if needed.

Type of License: Btavern

Date of Incident: 04/19/15

Class D License Number:

Capt G. V. Wells
Commanding Officer

MAY 04 2019
Date

DISPOSITION – FOR LICENSING ONLY

[illegible]

PA-33E Narrative

This report is written by P.O. James FILSINGER, assigned to Squad 1420, Late Shift

On Sunday, 04-19-15, at approximately 12:41am, Squad 1420 (P.O. James FILSINGER), Squad 1447 (P.O. Steven ROUFUS) and Squad 1410 (Sgt. Joseph HONZELKA) were dispatched to a loud music complaint at Rusty's Old 50, located at 730 N. Old World Third St.

Upon entering the tavern I was met by the listed licensee Robert F SMITH. SMITH complied with my request to view all pertinent licenses, and capacity placard. Upon viewing licenses, I found all licenses related to class B tavern, with three bartender licenses posted.

At this time SMITH stated to myself and Sgt. HONZELKA that he was only open 2-3 days a week to prevent the city from taking his license away.

The tavern was occupied by approximately 10 people who were all seated at the west bar. The establishment seemed to be operating as a normal tavern.

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC
 Address of Licensed Premises: 730 N. Old World Third Street
 Business Phone: 414-350-6463 Type of License: Blavern

District: 1

☐ Violation / ☒ Incident # Tavern Check

Date of Incident: 01/21/2015

Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (if no, explain in narrative section)

Licensee Notified by Officer: P.O. Corstan D. COURT

Date: 01/21/2015

Time: 2242

Licensee or Agent's Name: SMITH, Robert F
 Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968
 Home Phone: 414-350-6463

Co-Licensee Name: Unknown

Home Address:

Class S License Number:

Date of Birth:
 Home Phone:

Bartender Name: PROFFIT, Stephen T
 Home Address: 904 Charles Street, Watertown, WI 53094
 Class D License Number: none

Date of Birth: 08/25/1976
 Home Phone: 262-501-8874

Licensed Person / Public Pass. Vehicle, etc.:

Home Address:

Class D License Number:

Date of Birth:
 Home Phone:

VIOLATION/INCIDENT – DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Investigating Officer: PO Corstan D. COURT

District / Bureau: 14

Date: 01/25/2015


 Commanding Officer

Date

DISPOSITION – FOR LICENSING ONLY

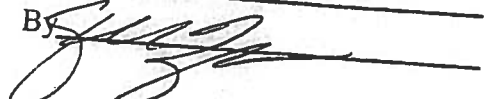
Citation No.	Case Number	Disposition	Judge	Date

INVESTIGATION UNIT

2-2-15

ferred

By



PA-33E Narrative

This report is typed by P.O. Corstan D. COURT assigned to the First District - Late Power Shift. On 01-25-2015 at 8:10 pm, Squad 1413, Sergeant David LIGAS Jr., instructed me to write a PA-33 regarding a conversation we had with Radomir NMI BUZDUM, w/m 11-24-59, during a license premise check at 730 N. Old World Third Street (Boardroom Entertainment MKE) on 01-21-15. BUZDUM was explaining to Sergeant LIGAS and myself that he has dealt with other municipalities regarding his other license premises throughout the state of Wisconsin. BUZDUM said that he has sued these communities over the adult entertainment license before and every time the city (which he has sued) and himself have come to a settlement/compromised. He explained to us that he would sue for a large sum of money, the city would want to settle the lawsuit, and BUZDUM would ask for full nudity. The municipality would then counter offer the requirement of bikini tops/bottoms and ultimately they would settle for pasties on the top, thongs on the bottom. BUZDUM said it was a revolving cycle and this was just the way he would have to play it.

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC
 Address of Licensed Premises: 730 N. Old World Third Street
 Business Phone: 414-350-6463 Type of License: Btavern

District: 1

☐ Violation / ☒ Incident # Tavern Check Date of Incident: 01/24/2015
Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (If no, explain in narrative section)

Licensee Notified by Officer: P.O. Corstan D. COURT

Date: 01/24/2015

Time: 12:37 am

Licensee or Agent's Name: SMITH, Robert F
 Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968
 Home Phone: 414-350-6463

Co-Licensee Name: Unknown
 Home Address:
 Class S License Number:

Date of Birth:
 Home Phone:

Bartender Name: PROFFIT, Stephen T
 Home Address: 904 Charles Street, Watertown, WI 53094
 Class D License Number: none

Date of Birth: 08/25/1976
 Home Phone: 262-501-8874

Licensed Person / Public Pass. Vehicle, etc.:
 Home Address:
 Class D License Number:

Date of Birth:
 Home Phone:

VIOLATION/INCIDENT – DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited:	Violation & Ord. / Statue No.:	Date of Birth:
Citation Number:		Court Date:
Name of Person Cited:	Violation & Ord. / Statue No.:	Date of Birth:
Citation Number:		Court Date:
Name of Person Cited:	Violation & Ord. / Statue No.:	Date of Birth:
Citation Number:		Court Date:
Name of Person Cited:	Violation & Ord. / Statue No.:	Date of Birth:
Citation Number:		Court Date:
Name of Person Cited:	Violation & Ord. / Statue No.:	Date of Birth:
Citation Number:		Court Date:

Investigating Officer: PO Xavier BENITEZ District / Bureau: 14 Date: 01/24/15
Capt Leslie Thiele
 Commanding Officer Date: 02-02-15

DISPOSITION – FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date

By: [Signature]

PA-33E Narrative

This report is being submitted by PO Xavier BENITEZ assigned to District 1, Power Shift. On Saturday January 24, 2015 at 12:37 am, a license premise check was conducted by police officers at 730 N. Old World Third St (Boardroom Entertainment MKE) the officer's on scene were SGT Thomas ACKLEY (sq1411), PO Christopher MARTIN, PO Seth EDWARDS (sq 1420), PO Corstan COURT and myself (sq 1440).

During the premise check PO MARTIN used a handheld video camera and started to record for documentation. Through the main entrance/exit doors, the main bar that was in use was located in the northwest corner, with a bartender behind the bar working. Across the main bar, was now a lounge/ sitting area, located at the southwest corner. The stage area (with a vertical pole for dancing) was removed, which was located in the same location on previous checks (01-21-15 and 01-22-15). As I continued to do my walk through of the establishment I did not observe any females dancing. Michelle L HIGGINS, w/f 12-22-93, was observed wearing a two-piece flower bikini, Sarah M. JANUS, (w/f 07/30/86) was observed wearing a black two piece bikini. All the other females at the location were dressed causal and in normal clothing.

The subjects Robert F. SMITH (m/w 12-06-68), Radomir BUZDUM, (w/m 11-24-1959) and Timothy J. MILLER, (w/m 12-20-71) were cited for public entertainment license required for 01-21-15 and 01-22-15. The video was placed on police inventory # 15002661.

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC

Address of Licensed Premises: 730 N. Old World Third Street

Business Phone: 414-350-6463

Type of License: Blavern

District: 1

☐ Violation / ☒ Incident # Tavern Check

Date of Incident: 01/24/2015

Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (If no, explain in narrative section)

Licensee Notified by Officer: P.O. Corstan D. COURT

Date: 01/24/2015

Time: 12:37 am

Licensee or Agent's Name: SMITH, Robert F

Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968

Home Phone: 414-350-6463

Co-Licensee Name: Unknown

Home Address:

Class S License Number:

Date of Birth:

Home Phone:

Bartender Name: MILLER, Timothy J

Home Address: N866 County Road R

Class D License Number:

Date of Birth: 12/20/1971

Home Phone: 920-253-6391

Licensed Person / Public Pass. Vehicle, etc.:

Home Address:

Class D License Number:

Date of Birth:

Home Phone:

VIOLATION/INCIDENT - DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

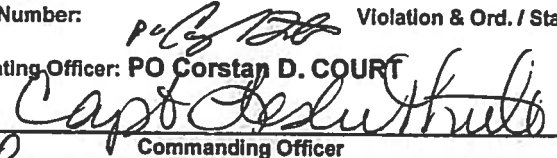
Date of Birth:

Court Date:

Investigating Officer: PO Corstan D. COURT

District / Bureau: 14

Date: 01/24/15



 Commanding Officer

Date

DISPOSITION - FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date
			INVESTIGATION UNIT	
			2-2-15	

By



PA-33E Narrative

This report is being submitted by P.O. Corstan D. COURT assigned to the First District, Late Power Shift. On Saturday, January 24, 2015 at 10:21 pm, a license premise check was conducted by police officers at 730 N. Old World Third St (Boardroom Entertainment MKE) the officer's on scene were SGT David LIGAS Jr. (sq1413), PO's Joshua POST and Mariolys FLORES (sq 1442), PO Corstan COURT and myself (sq 1440)

During the premise check PO FLORES used a handheld video camera and started to record for documentation. Through the main entrance/exit doors, the main bar that was in use was located in the northwest corner, with a bartender behind the bar working. Across the main bar, was now a lounge/ sitting area, located at the southwest corner. The stage area (with a vertical pole for dancing) was removed, which was located in the same location on previous checks (01-21-15 and 01-22-15). As I continued to do my walk through of the establishment I did not observe any females dancing.

While talking with the bar manager, Timothy J. MILLER, (w/m 12-20-71), I observed Michelle L HIGGINS (w/f 12-22-93), Sarah M. JANUS, (w/f 07/30/86) and Emily L BELLOVARY (w/f 10-18-91) walking upstairs from a basement entrance which was located behind the bar on the northwest corner of the establishment. I informed Sergeant LIGAS of the encounter and he went to investigate the basement with Officer LIMBERG. While they were in the basement, I questioned MILLER about why the females were in the lower part of the tavern and he told me that they would, on occasion, go into the basement and smoke because they do not want to go outside. I then questioned each one of the females, separately, about what they were doing in the basement and each stated that they smoke in the basement because it's cold outside. Sergeant LIGAS and Officer LIMBERG returned from the basement and said that there were two other female's (unknown names) in the basement, which walked upstairs upon their arrival. Officer LIMBERG told me that the basement was a wide-open area used for storage with an area (containing a davenport and six lawn chairs) looked to be for smoking. There was also an incense stick burning within that area.

All females inside the tavern were wearing "club" type clothing (skirts, shorts, cropped shirts, and bikini tops.

The video of the premise check was placed on inventory # 15002759

MILWAUKEE POLICE DEPARTMENT

REPORT OF INCIDENTS INVOLVING LICENSED PERSONS OR PREMISES

15-001

TO: Captain of Police Leslie THIELE

Business Name: Boardroom Entertainment MKE, LLC

Address of Licensed Premises: 730 N. Old World Third Street

Business Phone: 414-350-6463

Type of License: Blavern

District: 1

☒ Violation / ☐ Incident # Tavern Check

Date of Incident: 01/22/2015

Licensee or Manager on premises at time of violation / Incident? ☒ Yes ☐ NoLicensee cooperative? ☒ Yes ☐ No (If no, explain in narrative section)

Licensee Notified by Officer: PO Christopher MARTIN

Date: 01/22/15

Time: 23:05

Licensee or Agent's Name: SMITH, Robert F

Home Address: 212 E. Mineral St, Milwaukee, WI 53204

Date of Birth: 12/06/1968

Home Phone: 414-350-6463

Co-Licensee Name: Unknown

Home Address:

Class S License Number:

Date of Birth:

Home Phone:

Bartender Name:

Home Address:

Class D License Number:

Date of Birth:

Home Phone:

Licensed Person / Public Pass. Vehicle, etc.:

Home Address:

Class D License Number:

Date of Birth:

Home Phone:

VIOLATION/INCIDENT - DESCRIBE FACTS AND CIRCUMSTANCES IN NARRATIVE SECTION

Name of Person Cited: Robert SMITH

Citation Number: 6156236-2

Violation & Ord. / Statue No.: 108-5-1-A

Date of Birth: 12-06-68

Court Date: 03/13/15

Name of Person Cited: Radomir BUZDUM

Citation Number: 6156234-0

Violation & Ord. / Statue No.: 108-5-1-A

Date of Birth: 11/24/59

Court Date: 03-13-15

Name of Person Cited: Timothy J MILLER

Citation Number: 6156232-5

Violation & Ord. / Statue No.: 108-5-1-A

Date of Birth: 12/20/71

Court Date: 03-13-15

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

Date of Birth:

Court Date:

Name of Person Cited:

Citation Number:

Violation & Ord. / Statue No.:

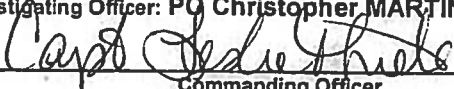
Date of Birth:

Court Date:

Investigating Officer: PO Christopher MARTIN

District / Bureau: 14

Date: 01/23/15



Commanding Officer

06-21-15

Date

DISPOSITION - FOR LICENSING ONLY

Citation No.	Case Number	Disposition	Judge	Date

LICENSE INVESTIGATION UNIT

Received

Referred

By

This report is being submitted by PO Christopher MARTIN, assigned to District 1, Power Shift.

On Thursday, January 21, 2015 at 10:53pm, a license premise check was conducted by police officers at 730 N. Old World Third St (Boardroom Entertainment MKE) the officers on scene were Sgt. Thomas ACKLEY (sq 1411), Sq. 1440 (PO Xavier BENITEZ and Corstan COURT), and Sq. 1420 (PO Seth EDWARDS and I). Prior to entering the establishment, I turned on a handheld video camera and started to record the investigation for documentation.

Upon entering the establishment I observed a black female, later identified as Louria L RAMSEY (B/F, 03-18-86 of 4940 N 18Th ST., PH# 414-650-2278), dancing on a stage wearing a black tight fit dress with horizontal slits on both sides of the dress. The horizontal slits went the whole length of the dress. RAMSEY had the top of the dress pulled down underneath her breast with black heart shaped "pasties" with rhinestones covering her areolas. Once RAMSEY noticed that the police had entered the establishment, she pulled the top of her dress back over her breast covering her "pasties" and continued to dance on the stage that had a pole.

Premise Description

Through the main entrance/exit doors, the main bar that was in use was located in the northwest corner, with a bartender behind the bar working. Across the main bar, was the stage area (with a vertical pole for dancing) located at the southwest corner. I continued to walk east through the premises and observed a large back bar area not in use in the south east corner. I then walked to a side room on the north wall and in the back room I observed chairs displayed out on the perimeter of the room and two curtained areas with a chair in the middle of each area, which appeared to be used as a private dance area. Continuing east along the north wall, were the bathrooms. Along the southeast wall it led to an employee only area. This area had a kitchen and a room designated for self-employed dancers, which was being used as a changing room for dancers. The changing room had lockers, mirrors, and tables so that the dancers could change clothing. The area had several pieces of clothing laying on the floor and on the table. I located a dancer in this room who was identified as Sarah M JANUS (W/F, 07/30/86, of 612 E. Harvard St). JANUS was wearing black underwear and a black bra with silver rhinestones. A back exit was also located, which is not used by customers.

I then spoke with RAMSEY, who stated she is employed as an independent contractor and that she does this job as a part-time. RAMSEY stated that she has a real full time job. RAMSEY asked if the video that was taken of her dancing would be on the news, as it would affect her other job.

Located at the main bar were several female dancers who were identified as Sara Jean BOIS (W/F, 11/23/83 of N48W28966 County Road JK) who was wearing a black and white checkered button shirt, and pink women briefs underwear. Michelle Lyn HIGGINS (W/F, 12-22-93 of N8210 High Rd Watertown, WI) was wearing leopard print underwear and a white bra. Stacy A THORMAN (W/F, 07/14/83, N6975 Saucer Dr, Watertown, WI) who was wearing Black lacy underwear and bra. Officers who conducted the tavern check on Wednesday, January 21, 2015 interviewed these dancers.

PO Seth EDWARDS located another dancer at the bar that was identified as Azaria F WILDER (B/F, 07-11-91 of 3495 N Oakland Av) who was wearing a leopard print dress, thigh high, with a red bra under her dress.

There were also 4 patrons located inside the establishment near the main bar area.

Also on scene during the tavern check was Robert F SMITH (W/M, 12/06/68) who is the agent of Boardroom Entertainment MKE, LLC. Radomir BUZDUM (W/M, 11/24/59, N9661 BOJE CT, Watertown, WI), and Timothy J MILLER (W/M, 12/20/71, of N866 County Road R, Watertown, WI)

SGT ACKLEY advised BUZDUM that citations would be issued from last night (01/21/15) and tonight (01/22/15). SGT ACKLEY asked BUZDUM if he would like to be issued citations tonight, as officers would be inside the establishment longer or on a slower night so that our presence wouldn't interfere with his business. BUZDUM requested the citation to be issued at a later date. SGT. ACKLEY also informed BUZDUM that license premise checks would continue until the tavern no longer has violations or until this matter is settled in court. SGT. ACKLEY informed BUZDUM that the following citations would be issued for City of Milwaukee Ordinance 108-5-1-A (Public Entertainment premise license required)

A copy of the video was placed on INV# 15002496

This following information was written by PO Seth EDWARDS assigned to District 1, Power Shift.

On Friday, January 23, 2015 at approximately 0150 I along with Squad 1440 (PO Xavier BENITEZ and PO Cortsan COURT) returned to 730 N. Old World Third St, which is known, as Rusty's for a follow up on an individual who provided false information during and initial Field Interview and stated she was Quiana F MONROE (B/F 07-11-1991, 3495 N. Oakland Ave, (414) 312-0288). Upon entering the establishment I observed a W/F dancing on the stage area directly west of the entrance. She was topless wearing only underwear and high heels. Her areolas were exposed and she did not have any pasties on. The W/F then got off the stage and ran to the back. I located MONROE who stated again that the information she provided me was correct. I then asked MONROE to step outside to my squad car so we could identify her and she agreed. When we arrived at the squad car MONROE provided her real information and a search identified her as Azaria F WILDER (B/F 07-11-1991, 3495 N Oakland Ave).

SMITH, MILLER and BUZDUM were issued citations on January 24, 2015 at about 1:15 AM for the violations that occurred on January 21, 2015 and January 22, 2015.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

BOARDROOM ENTERTAINMENT MKE, LLC.,))
Plaintiff,))
vs.)	No.
CITY OF MILWAUKEE, a Wisconsin))
Municipal corporation,)	PLAINTIFF DEMANDS
Defendant.)	TRIAL BY JURY

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES Plaintiff, BOARDROOM ENTERTAINMENT MKE, LLC., and
complaining of CITY OF MILWAUKEE, a Wisconsin Municipality, and alleges as follows:

PARTIES JURISDICTION AND VENUE

1. Plaintiff Boardroom Entertainment MKE, LLC., is a corporation organized under the laws of the State of Wisconsin, with its principal place of business in Milwaukee County, Wisconsin.
2. Plaintiff is the tenant in a lease to the first floor of the real estate located at 730 N. Old World Third Street, Milwaukee, Wisconsin for a period of twenty-nine years.
3. Plaintiff desires to use that property for the purpose of operating a cabaret and retail sale of alcoholic beverages, including the presentation of constitutionally protected erotic entertainment, as well as the incidental sale of other items.
4. Defendant City of Milwaukee is a City organized under the laws of the State of Wisconsin and is located in Milwaukee County, Wisconsin.
5. All references to Defendant Milwaukee are, inter alia, understood to include any and all

of its departments, agents, officials and employees.

6. Unless otherwise noted, the acts of these employees and agents were also done under the color and pretense of the statutes, ordinances, regulations, customs and usages of Milwaukee, and its divisions, pursuant to the official custom, habit, or policy thereof, under color of its authority.
7. This Court has jurisdiction over the claims raised herein pursuant to 28 U.S.C. 1331, 1343 and 42 U.S.C. 1983, 1988.
8. Venue is appropriate in the Eastern District of Wisconsin, since the acts complained of occurred within that District.

FACTUAL ALLEGATIONS

9. Plaintiff has entered into a lease for the period of twenty-nine years for the first floor of the real property located at 730 N. Old World Street within the boundaries of Milwaukee, Wisconsin.
10. Plaintiff has obtained a permit from Defendant to serve alcoholic beverages at that location.
11. Plaintiff intends to operate a club on those premises which will provide entertainment to the public, including adult entertainment.
12. The right to disseminate adult-oriented literature and media is protected by the First and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the Wisconsin Constitution.
13. Defendant has enacted a series of ordinances which purport to prohibit Plaintiff from offering the constitutionally protected entertainment it intends to offer to the public unless

it obtains "either an annual license or permit therefor." Section 108-5.1, Milwaukee Ordinances.

14. The requirements of Defendant's Ordinances constitute a prior restraint of speech, in that Plaintiff cannot offer adult entertainment to the public without having first obtained either a license or permit from Defendant.
15. The requirements for the issuance of a Public Entertainment License are invalid and unconstitutional for the following reasons:
 - A. There is no requirement that the Application for the license required be issued within a brief period of time. Rather, the Ordinance sets forth a cumbersome, open-ended process with no time limitations for the issuance of a decision. 108-5.7.
 - B. The Ordinance is vague and indefinite in that it contains no objective criteria for the issuance or denial of a license, but allows an application for the license to be denied for reasons which are arbitrary and capricious, including: "plans the application has to insure the orderly appearance and operation of the premises with respect to litter and noise . . . as well as a description of how applicable noise standards will be met for the subject premises" (108-5.b-7-g); "whether or not the applicant's proposed operations are basically compatible with the normal activity of the neighborhood in which the licensed premises is to be located: (108-b-7-1); "such other reasonable and pertinent information the common council or the proper licensing committee may from time to time require" (108-5.b-9); "the appropriateness of the location and premises where the entertainment premises is

to be located and whether use of the premises for public appropriateness of the location and premises where the entertainment premises is to be located and whether use of the premises for public entertainment will create undesirable neighborhood problems. (108-7.d-2); "the fitness of the location of the premises to be maintained as the principal place of business to include whether there is an overconcentration of businesses licensed under this chapter" (108-7.d-3); the applicant's record in operating similarly licensed premises (108-7.d-4); any other factors which reasonably relate to the public health, safety and welfare (108-7.d-6).

- C. The hearing procedures in instances where Defendant believes it has reason to deny the application allows Defendant to introduce evidence on matters which are vague, indefinite and uncertain, including

"b. the appropriateness of the location and premises where the licensed premises is to be located and whether use of the premises for the purposes or activities permitted by the license would tend to facilitate a public or private nuisance or create undesirable neighborhood problems . . .";

"c. The fitness of the location of the premises to be maintained as the principal place of business, including but not limited to whether there is an overconcentration of businesses of the type for which the license is sought, whether the proposal is consistent with any pertinent neighborhood business or development plans, or proximity to areas where children are typically present:"

"f. Any other factors which reasonably relate to the public health, safety and

welfare.”

16. The conditions and standards which Milwaukee may impose on the issuance of any license permits for entertainment are vague and vest unbridled discretion in Milwaukee’s officials whether to grant or deny a license.
17. Milwaukee’s licensing/permitting procedures for entertainment fail to provide for prompt judicial review.
18. Milwaukee’s licensing/permitting scheme for adult uses fail to serve a substantial or significant governmental interest, and is not narrowly tailored to serve any such interest.
19. Milwaukee’s ordinances were adopted with a predominately censorial purpose and without any evidence or factual basis to believe that they are required to serve a substantial governmental purpose.
20. Milwaukee’s attempt to regulate entertainment does not do so by the least restrictive means available.
21. Milwaukee’s restrictions on entertainment fail to provide for adequate alternative avenues of communication.
22. Milwaukee’s zoning, licensing and permitting procedures for entertainment are unconstitutional on their face, as applied to Plaintiff.
23. Milwaukee’s ordinances regulating entertainment violate the First and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the Wisconsin Constitution.
24. Although Plaintiff has not yet offered any entertainment at its business, Defendant, through Adam Stevens, an Assistant City Attorney, has threatened to close Plaintiff’s

business and revoke the licenses which it currently holds in the event that Plaintiff offers adult entertainment to the public.

25. When Plaintiff opened its doors for business on January 14, 2015, serving only alcoholic liquor for which it has a license, but offering no live entertainment, eight to ten Milwaukee police officers descended on Plaintiff's premises, walked through the entire premises and accused its manager of not having the appropriate "paperwork" to operate its business, disrupting Plaintiff's business and disturbing its customers.
26. As a result of Defendant's actions, Plaintiff is entitled to relief pursuant to 42 U.S.C. §1983.

COUNT I

Declaratory Relief

27. Plaintiff realleges paragraphs 1-26 as Paragraph 27.
28. There is an action for Declaratory Relief pursuant to 42 U.S.C. 2201 and 2202.
29. There is an actual, bona fide controversy between Plaintiff and Defendant City of Milwaukee in that Plaintiff contends that the subject ordinances are preventing it from commencing the operation of a lawful business and are unconstitutional on their face, and as applied, in violation of the First and Fourteenth Amendments to the United States Constitution, whereas Defendant Milwaukee presumably contends that its ordinances and actions are constitutional.
30. Plaintiff is unable to use this property to which it has a valid lease and permits for the constitutionally protected purposes it desires without harassment and threats of prosecution by Defendant.

WHEREFORE, Boardroom Entertainment MKE, LLC., requests this Court to enter a Declaratory Judgment finding that the subject ordinances are unconstitutional on their face and as applied to Plaintiff, and further award court costs incurred in prosecuting this action including a reasonable attorney's fees pursuant to 42 U.S.C. 1988, and such further relief pursuant to 28 U.S.C. 2202 as this Court may deem appropriate.

Count II

Injunctive Relief

31. Plaintiff realleges Paragraphs 1-26 as paragraph 31.
32. This is an action for injunctive relief.
33. Defendant has harassed Plaintiff and its customers by extraordinary visits to its premises by several of its law enforcement officers, and has explicitly threatened to enforce the subject Ordinances against Plaintiff, to revoke the licenses and permits which have already been issued to Plaintiff for the operation of its business in retaliation for its intention to offer entertainment protected by the First Amendment.
34. The threats to take action against Plaintiff for offering constitutionally protected entertainment constitutes a prior restraint on Plaintiff's right to freedom of speech.
35. The mere existence of a prior restraint on free speech causes a chilling effect on protected expression.
36. Any deprivation of First Amendment rights constitutes irreparable injury per se.
37. Any harm to Defendant City of Milwaukee resulting from the issuance of an injunction is substantially outweighed by the harm to Plaintiff caused by the deprivation of its cherished First Amendment rights.

38. It is always in the public interest to protect constitutional freedoms by enjoining unconstitutional laws.
39. Any legal remedy is per se inadequate when loss of First Amendment rights is involved.
40. Injunctive relief is appropriate upon a declaration that a law is unconstitutional.

WHEREFORE, Plaintiff respectfully requests this Court to grant it the following relief:

- A. Enter a temporary restraining order immediately prohibiting Defendant from taking any action to interfere with the operation of Plaintiff's business, including taking any action to affect the licenses and permits currently held by plaintiff, until a hearing can be held on Plaintiff's Motion for a Preliminary Injunction.
- B. Hold a hearing and temporarily and permanently enjoin Defendant from applying and enforcing Its Ordinances, in whole or in part, against Plaintiff.
- C. Award Plaintiff its attorney's fees and costs pursuant to 42 U.S.C. 1988.
- D. Award Plaintiff such other and further relief as this Court deems fit, just and equitable.

Of Counsel:
Poltrock & Giampietro
123 W. Madison, Suite 1300
Chicago, Illinois 60602
312-236-0606; Fax 312-236-9264
wgiampietro@wpglawyers.com

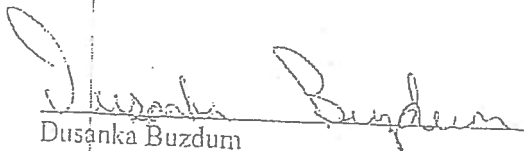
S/Wayne B. Giampietro
One of Plaintiff's attorneys

Andrew Arena
110 Old Water Third Street
Riverfront Plaza, Suite 210
Milwaukee, Wisconsin 53203
414-645-6100; Fax 414-645-3500
Andrew@ArenaLawOffices.com

DECLARATION
(928 U.S.C. § 1746)

I, Dusanka Buzdum, do declare as follows:

1. I am a member of Boardroom Entertainment MKE, LLC., Plaintiff herein; I have read the foregoing Complaint. I have knowledge of the allegations contained in it and all of the facts alleged are true and correct.
2. I declare, under penalty of perjury, that the foregoing is true and correct.
3. I have executed this Declaration on January 10th, 2015.


Dusanka Buzdum

Six Star Holdings, LLC v. City of Milwaukee

United States District Court for the Eastern District of Wisconsin

March 18, 2013, Decided; March 18, 2013, Filed

Case No. 10-C-0893

Reporter

932 F. Supp. 2d 941; 2013 U.S. Dist. LEXIS 37026; 2013 WL 1130437

SIX STAR HOLDINGS, LLC and FEROL, LLC,
Plaintiffs, v. CITY OF MILWAUKEE, Defendant.

Counsel: [**1] For Six Star Holdings LLC, Ferol LLC, Plaintiffs: Jeff Scott Olson, Jeff Scott Olson Law Firm SC, Madison, WI.

For City of Milwaukee, Defendant: Adam B Stephens, Stuart Mukamal, Milwaukee City Attorney's Office, Milwaukee, WI.

Judges: LYNN ADELMAN, United States District Judge.

Opinion by: LYNN ADELMAN

Opinion

[*943] DECISION AND ORDER

Since 2009, plaintiffs Six Star Holdings, LLC and Ferol, LLC have sought to open night clubs featuring erotic dance entertainment in the downtown area of the City of Milwaukee. In order to both serve liquor and present erotic dancing, [*944] the plaintiffs had to obtain two licenses under the Milwaukee Code of Ordinances: a tavern license and a "tavern amusement" license. In August 2010, each plaintiff applied for both licenses, and the City denied their applications. A year later, in September 2011, plaintiff Six Star decided to open a night club that featured erotic dance entertainment but did not serve alcohol. Six Star thought that to open such a "dry" gentlemen's club, it needed to be licensed to operate a theater. It therefore applied for a theater license. However, the City never acted on that application. Instead, a few months after Six Star applied for a theater license, the City repealed [**2] the chapter of the Code of Ordinances that provided for issuance of theater licenses. At the same time, the City also repealed the ordinance

governing tavern-amusement licenses as well as a related ordinance governing "public entertainment clubs." The City replaced these ordinances with new ordinances governing "public entertainment premises."

In the present lawsuit, which arises under 42 U.S.C. § 1983, the plaintiffs allege that the former ordinances governing tavern amusement, theaters, and public entertainment clubs violated the First Amendment. They also allege that the tavern, tavern-amusement, and theater ordinances were unconstitutionally applied to them. The plaintiffs do not seek any injunctive or other form of prospective relief, and they do not bring any claims involving the newly enacted ordinance governing public entertainment premises. Instead, they seek only damages for the time period in which the repealed ordinances (and the tavern ordinance, which is still in force) prevented them from offering erotic dance entertainment in the City. Before me now are the parties' motions for summary judgment.

I. BACKGROUND

The plaintiffs are managed by John Ferraro, who is the manager [***3] of three existing erotic dance establishments in Wisconsin, each named Silk Exotic Gentlemen's Club. One of these establishments is located in the City of Milwaukee, although not in the downtown area. In 2009, Ferraro formed Ferol and leased premises located on Pittsburgh Avenue in downtown Milwaukee, intending to open a new erotic dance establishment, named Satin. Because Satin would have offered both liquor and erotic entertainment, Ferol needed to obtain both a tavern license and a tavern-amusement license. Ferol applied for both licenses in July 2009. Once the applications were filed, the alderman for the district in which Satin was to be located informed his constituents of Ferol's

proposal. Many in the neighborhood voiced opposition to the proposal, and Ferol's lawyer advised it that, based on the amount of public opposition, the applications were sure to be denied. Under the Code of Ordinances, when a license application is denied, the applicant is disqualified from applying for the same license for the same premises for one year. See Milwaukee Code of Ordinances § 85-13-4-a. After considering the advice of its lawyer, Ferol decided to withdraw its applications rather than risk [**4] having the applications denied and being prohibited from reapplying for one year.

In August 2010, Ferraro decided to reapply for tavern and tavern-amusement licenses for Satin. He also decided to attempt to open a third erotic dance establishment in the City of Milwaukee and formed Six Star for the purpose of operating that establishment, which would have been named Silk East. Six Star proceeded to execute a lease for a location on Old World Third Street in downtown Milwaukee and to apply for the necessary tavern and tavern-amusement licenses.

[*945] Soon after Ferol and Six Star filed their applications, community members expressed opposition to the proposals. However, rather than withdraw their applications, both Ferol and Six Star decided to proceed to a hearing before the Licenses Committee of the Milwaukee Common Council, which was held on September 20, 2010. During the hearing, the Committee heard testimony from members of the communities surrounding each proposed establishment. The plaintiffs had lawyers present and were permitted to cross-examine the community members who testified in opposition to the applications. The plaintiffs were also permitted to present their own witnesses in [*'5] support of their applications.

The Committee heard Six Star's applications first. Sixteen witnesses testified in opposition to its proposal for the Old World Third location. Ten of those witnesses represented commercial interests in the neighborhood, such as existing retail stores, hotels, and business associations. They almost uniformly opposed using the location as an erotic dance establishment on the ground that such a use would have been inconsistent

with a development plan that had been adopted for the neighborhood. The business representatives testified that the goal of the development plan was to attract more retail establishments to the neighborhood, such as clothing stores and other shops, and that the presence of a gentlemen's club would deter retailers from moving in. Most of the remaining witnesses were residents of the neighborhood, including individuals who lived in apartments above the proposed location. Those witnesses expressed concern about the noise that the proposed establishment would generate, about the safety of the neighborhood given the kind of clientele adult establishments are known to attract, and about the effect of the establishment on property values. [**6] Some of the residents also noted that the area was already oversaturated with bars and night clubs. One resident, Francisco Camacho, indicated that he found erotic dancing offensive. He testified that he opposed both Six Star's and Ferol's proposals on the ground that erotic dancing perverts the community and is against the teachings of Islam.

Alderman Bauman, the alderman for the district, testified in opposition to Six Star's applications. He mostly emphasized the concerns of the business community and their efforts to turn the area into one focused on shopping and retail. As he explained:

There is an inherent conflict between trying to generate retail and commercial with a gentlemen's club. Forget the morality issue, forget the propriety of it all, just look at the economics of it. They are somewhat different markets. They are looking for different things by their very definition. And you're not going to put an American Girl's store next to a gentlemen's club on Chicago Avenue and Michigan Avenue, for example. They are conflicting markets.

You've heard from the downtown. The City of Milwaukee has invested, I believe it's \$50,000 with a match from the downtown stakeholders of another [**7] \$50,000 for a \$100,000 fund to attempt to catalyze downtown retail investment. Again, we're working at cross

purposes. If we allow clubs that will retard that retail development, our investments are making no sense.

Continuation of Licenses Committee Hearing Tr., Sept. 20, 2010 at 12-13, ECF No. 61-2.

Once all testimony had been taken, the Committee discussed Six Star's applications. Alderman Hamilton moved to recommend that the Common Council deny the applications on the ground that granting the licenses would be contrary to the [*946] health, safety and welfare of the neighborhood. He explained that his motion was based on the inconsistency between an erotic dance establishment and the kind of retail environment that the neighborhood was trying to create, and also on the residents' "resounding opposition" to the proposal. *See id.* at 19-20. The Committee voted to recommend that the Common Council deny Six Star's applications. The vote was unanimous.

Turning to Ferol's applications, the Committee heard testimony from eleven witnesses who opposed the proposal. The witnesses included representatives of the business community and residents of the neighborhood. Both the residents and the business [*8] representatives stated that the proposal was inconsistent with a development plan that had been adopted for the area. As one witness explained, the development plan called for a mix of residential and retail uses, including so-called "mixed" uses in which retail or commercial establishments occupied the first floor of a building and residential units occupied the upper floors. *See* Continuation of Licenses Committee Hearing Tr., Sept. 20, 2010 at 22-25, ECF No. 62-1. The plan specified that the commercial uses in the neighborhood would be "boutique-scaled," which meant that they would be small-scale businesses such as boutique retailers and design showrooms. *Id.* at 22-23. The witness explained that the proposal for Satin involved a large facility (20,000 square feet and up to 1,000 to 1,200 patrons per day) that was significantly out-of-scale with this focus on boutique uses. The witness further explained that there was not enough parking in the area to support a facility of that size. Other witnesses echoed this concern about adequate parking. Still other witnesses expressed concern about

the effect of the proposal on residential property values and on neighborhood safety, and about [*9] potential noise and traffic issues.

Alderman Witkowiak, the alderman for the district, also testified in opposition to Ferol's applications. He mostly reiterated the concerns expressed by the community members who testified in opposition to Ferol's applications. He explained that the proposal was too large and out-of-scale for the neighborhood, that there would be inadequate parking space to support the proposal, that the proposal was inconsistent with the development plan for the area, and that some residents were concerned about safety and property values.

Once all testimony had been taken, the Committee discussed Ferol's applications. This time, Alderman Kovacs moved to recommend that the Common Council deny them. He cited the overwhelming objections by the residents and businesses in the neighborhood and potential parking and traffic problems. The Committee unanimously voted to recommend that the Common Council deny Ferol's applications.

The next day, September 21, 2010, the Common Council voted to accept the Licensing Committee's recommendations on Six Star's and Ferol's applications for tavern and tavern-amusement licenses.

Approximately one year later, Six Star decided that it would [*10] attempt to operate the Old World Third location as a "dry" gentlemen's club—i.e., a night club that featured erotic dance entertainment but that did not serve alcohol. Six Star thought that it needed a theater license under Chapter 83 of the Code of Ordinances to operate such an establishment, and on September 14, 2011, it applied for such a license. Pursuant to its usual practice, the City Clerk's office notified the alderman for the district that the application had been filed. That was Alderman Bauman, and he instructed the City Clerk to "hold" Six Star's application. Because of this hold, Six Star's application was not set for a hearing before the Licenses Committee, and no action was ever taken on [*947] the application before the City repealed Chapter 83.

II. DISCUSSION

A. Claims Involving Tavern and Tavern-Amusement Licenses

The plaintiffs' primary claims are that the tavern-amusement ordinance, which, before March 1, 2012, appeared in Chapter 90 of the Milwaukee Code of Ordinances,¹ was unconstitutional on its face and unconstitutionally applied to them. However, the tavern-amusement ordinance did not, by itself, prevent either plaintiff from operating taverns that featured erotic dance [**11] entertainment. Rather, the plaintiffs needed both tavern licenses and tavern-amusement licenses to open the kind of night clubs they planned to open.² The City considered the plaintiffs' applications for both of these kinds of licenses together at the same hearing and denied them both for the same reasons. See Licenses Committee Hearing Tr., Sept. 20, 2010, at 2, ECF No. 59-1; Continuation of Licenses Committee Hearing Tr., Sept. 20, 2010, at 3, ECF No. 62-1. The plaintiffs have not argued that the tavern-licensing ordinance was unconstitutional on its face and have not clearly developed any argument showing that it was unconstitutionally applied to them. Yet, unless plaintiffs could show that the tavern-licensing ordinance was either unconstitutional on its face or unconstitutionally applied to them, they would not be entitled to damages even if the tavern-amusement ordinance were invalidated. Nonetheless, the arguments that plaintiffs make against the tavern-amusement ordinance to a certain extent imply that the City applied the tavern-licensing ordinance unconstitutionally, and the City does not argue that it is entitled to summary judgment on the ground that the plaintiffs have [**12] not brought a proper challenge to the tavern-licensing ordinance. Thus, I consider plaintiffs to be challenging the

tavern-amusement ordinance both on its face and as-applied, and the tavern-licensing ordinance as-applied.

Turning to these challenges, the plaintiffs' first argument is that the City imposed a "prior restraint" on speech without complying with the strict procedural requirements governing prior restraints. See, e.g., FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990); City of Lakewood v. Plain Dealer Publ'g Co., 486 U.S. 750, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988); Freedman v. Maryland, 380 U.S. 51, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965). However, the Seventh Circuit rejected that very argument in Blue Canary Corp. v. City of Milwaukee, 251 F.3d 1121 (7th Cir. 2001). [**13] There, the Seventh Circuit considered a challenge to a City of Milwaukee tavern-licensing decision that was in all material respects the same as the challenge the plaintiffs bring in the present case—a challenge involving the City's denial of a tavern license and an appropriate tavern-amusement license for a tavern that wanted to present erotic entertainment.³ The court framed [**948] the question presented as whether the City was permitted to take into account, in deciding whether to grant the licenses, "the character of the entertainment that the plaintiff served with its drinks." Id. at 1123. The plaintiff had argued that, in answering that question, the court should treat the City's licensing requirements as prior restraints. However, the court rejected that argument and evaluated the City's requirements under the standards applicable to time, place, or manner restrictions. Id. Accordingly, in the present case, I must treat the City's licensing requirements as time, place, or manner restrictions rather than

¹ Before March 1, 2012, sections 90-33, 90-34, and 90-35 of the Milwaukee Code of Ordinances pertained to tavern-amusement licenses. When I use the term "tavern-amusement ordinance," I am referring to those former sections of the Ordinances.

² Various provisions in Chapter 90 of the Code of Ordinances pertain to tavern licensing. Section 90-5 specifies the criteria for obtaining such a license, and when I use terms like "tavern-licensing ordinance" or "tavern ordinance," I am referring to that section.

³ In Blue Canary, the tavern sought renewal of its existing tavern license rather than a new license. However, for present purposes, there is no material difference between renewal of an existing license and denial of an application for a new license.

as prior restraints.⁴ See also *Schultz v. City of Cumberland*, 228 F.3d 831, 851 (7th Cir. 2000) ("Licensing, though functioning as a prior restraint, is constitutionally legitimate [*14] when it complies with the standard for time, place or manner requirements.").

Blue Canary also establishes that a city's decision to deny tavern licenses on the basis of the "character" of the applicant's proposed entertainment is, in general, a permissible regulation of the time, place, or manner of expressive activity. As the court explained, a city is permitted to consider the secondary effects of the entertainment, such as noise, safety, parking and traffic problems, and the general incompatibility of the entertainment with the normal activity of the neighborhood, when making licensing decisions. See 251 F.3d at 1123-25. In the present case, the transcript of the licensing hearing indicates that the City denied the plaintiffs' license applications for reasons having to do [*15] with these secondary effects rather than with disapproval of the content of the proposed expressive activity. The primary reason for denying the licenses for Silk East was that its presence in the neighborhood would have deterred the kind of retailers the community was trying to attract. As the alderman for the district testified, a retailer like American Girl® is unlikely to open a shop next to a gentlemen's club. This was a permissible basis for denying the licenses. See *id.* at 1124 ("Countless cases allow municipalities to zone strip joints, adult book stores, and like erotic sites out of residential and the classier commercial areas of the city or town.

Establishments that purvey erotica, live or pictorial, tend to be tawdry, to be offensive to many people, and to attract a dubious, sometimes a disorderly, clientele. Liquor and sex are an explosive combination, so strip joints that sell liquor are particularly unwelcome in respectable neighborhoods."). Likewise, the decisions to deny the licenses for *Satin* were based on its incompatibility with the neighborhood—the community members testified that the proposal was out-of-scale and that it would present parking, traffic, and safety [*16] issues. Again, a decision based on such secondary effects rather than on disagreement with the content of the expressive message qualifies as a permissible time, place, or manner regulation.⁵

[*19] The plaintiffs argue that the City's decisions cannot be upheld under a secondary effects rationale because the City did not produce formal studies or other credible evidence supporting its conclusion that erotic entertainment generates secondary effects. See Reply Br. at 5-8, ECF No. 75. However, the cases on which plaintiffs rely for the proposition that a city must produce evidence concerning secondary effects involved ordinances that, by their terms, expressly regulated erotic entertainment. See *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002), *Annex Books, Inc. v. City of Indianapolis*, 581 F.3d 460 (7th Cir. 2009), *R.V.S., L.L.C. v. City of Rockford*, 361 F.3d 402, 411 (7th Cir. 2004). In the present case, neither the tavern-licensing ordinance nor the tavern-amusement ordinance purported to

⁴ The plaintiffs contend that *Blue Canary* was wrongly decided. See Opening Br. at 31 n.4. However, as plaintiffs acknowledge, I am bound by Seventh Circuit precedent.

⁵ Although the vast majority of the testimony at the hearing focused on secondary effects, at least one community member's objection to Silk East and *Satin* was based, in part, on his moral objection to erotic entertainment. See Licenses Committee Hearing Tr., Sept. 20, 2010 at 5-7, ECF No. 59-1 (testimony of Francisco Camacho). However, objections like Mr. Camacho's were few and far between, and the record of the hearing does not indicate that the Licenses Committee gave those objections any weight. To be sure, the aldermen said that their decisions were based on the "overwhelming" or "resounding" neighborhood opposition to the proposed establishments, and they did not disclaim statements like Mr. Camacho's, but given that the vast majority of the opposition was based on secondary effects, I cannot conclude that the content-based objections played a causal role in the City's decision. I also note that, in *Blue Canary*, at least some of the public opposition to the renewal of the plaintiff's liquor [*17] license was based on "moral disapproval of the entertainment," 251 F.3d at 1122, yet the court found no constitutional violation in the City's decision not to renew the license.

regulate erotic activity specifically. Rather, those ordinances were designed to deal with the direct effects of taverns and the secondary effects of all forms of tavern entertainment. See Milwaukee Code of Ordinances [*18] § 90-35-1 (stating that City had found that tavern entertainment "can be a source of noise, litter, large and unruly congregations of people, and traffic and parking congestion that adversely affects the health, safety and welfare of the people of the city of Milwaukee"). No authority of which I am aware holds that a city must rely on formal studies before it may conclude that tavern entertainment has the potential to produce secondary effects such as noise, parking, and traffic problems, or the potential to conflict with the normal activity of a neighborhood. That conclusion would seem to be obvious, just as it is obvious that rallies held in a public park have the potential to generate excessive noise and other secondary effects. See Thomas v. City Park District, 227 F.3d 921, 924 (7th Cir. 2000). Moreover, at the licensing hearing, the City did take evidence, in the form of testimony from those in the neighborhood, before concluding that the plaintiffs' proposals would in fact generate undesirable secondary effects. Blue Canary establishes that neighborhood testimony is appropriate evidence concerning the secondary effects of a proposed form of tavern entertainment. 251 F.3d at 1124-25. [*19] Thus, before the City denied the plaintiffs' license applications, it did consider appropriate evidence concerning secondary effects, and so the City's decisions were not inconsistent with Alameda Books and related cases.

The plaintiffs also argue that the City cannot satisfy the prong of the time, place, or manner test requiring the government to leave open reasonable alternative avenues of communication. See City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 47, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986).⁶ Although the plaintiffs

initially argue that the City cannot show that it left open reasonable alternative avenues for all forms of tavern entertainment—including musical performances, stand-up comedy, dancing, karaoke, and other forms of tavern entertainment—their focus is on the lack of alternative avenues for erotic entertainment.⁷ Plaintiffs argue that, to carry its burden as to reasonable alternatives, the City must point to parcels of property [*950] where erotic entertainment was permitted as a matter of right rather than at the discretion of the City's licensing authorities. However, neither the Supreme Court nor the Seventh Circuit has held that a time, place, or manner restriction leaves open reasonable alternative [*20] avenues of communication only if it permits certain forms of expression as a matter of right in designated areas. Thus, the City's burden is not to point to sites where erotic dancing was permitted without a license. Rather, to satisfy the reasonable-alternatives requirement, the City must show that it did not exercise its licensing authority in a way that resulted in an unreasonable restriction on erotic expression.

To that end, the City has offered evidence as to the number [*21] of taverns allowed to present erotic dance entertainment in the City of Milwaukee between 2006 and 2010. There were fifteen taverns that presented erotic entertainment on a regular basis in 2006, fourteen in 2007, ten in 2008, twelve in 2009, and eleven in 2010. Each year, a few other taverns offered erotic entertainment on a part-time or occasional basis. (In 2010, for example, five taverns offered occasional erotic entertainment.) The plaintiffs contend that these numbers are insufficient for a city with a population close to 600,000. However, no evidence in the record indicates that any person who wanted to view erotic dance entertainment in the City of Milwaukee between 2006 and 2010

⁶ Under the usual formulation of the test, time, place, or manner restrictions are constitutional if they are content-neutral, narrowly tailored to serve a substantial governmental interest, and do not unreasonably limit alternative avenues of communication. See, e.g., Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989); City of Renton, 475 U.S. at 46-47.

⁷ To the extent that plaintiffs actually mean to argue that the City did not leave open reasonable alternative avenues for tavern entertainment in general, it is sufficient to note that there is nothing in the record to suggest that there was a shortage of tavern entertainment in the City of Milwaukee during the period of time for which plaintiffs seek damages.

found it unreasonably difficult to do so.

The plaintiffs contend that even if the number of erotic dance establishments in Milwaukee was sufficient to meet the needs of consumers of such entertainment, a time, place, or manner restriction must also allow those who wish to present such entertainment a reasonable opportunity to present it. That general proposition is true. See North Avenue Novelties, Inc. v. City of Chicago, 88 F.3d 441, 444 (7th Cir. 1995) (noting that, when examining availability of [*22] reasonable alternatives, "it is necessary to focus both on the ability of producers as a group to provide sexually explicit expression, as well as on the ability of the public as a whole to receive it"). However, the evidence in the record does not show that the licensing requirements left purveyors of erotic entertainment with no reasonable opportunities to operate in the City. True, the licensing ordinance prevented the plaintiffs from opening erotic dance establishments at their chosen locations, but the plaintiffs have not shown that they could not have found alternative locations in the City. Of course, because of the licensing requirements, the plaintiffs could not have known for sure whether they would have been permitted to offer erotic dance entertainment at any specific alternative location unless they actually applied for a license for that location and received a decision on the application, but the plaintiffs have offered no evidence suggesting that they even considered alternative sites, such as sites that were not located in the downtown area.⁸ Moreover, the plaintiffs have offered no evidence from other would-be purveyors of erotic entertainment indicating that the [*23] City's licensing requirements prevented them from offering [*951] erotic entertainment within the city limits. To be sure, the plaintiffs point out that a fair number of applications for new erotic taverns were either denied or withdrawn between 2006 and 2010, but no context is given for those denials and withdrawals (other than those involving the plaintiffs' applications). For example, I have not been told where the

proposed taverns would have been located, whether the proposed licensees made reasonable efforts to find alternative locations, or whether the proposed licensees were qualified to hold tavern licenses in the first place. Thus, based on the present record, which includes the fact that a number of taverns featuring erotic dance entertainment operated within the city limits during the time period relevant to this suit—including one operated by the manager of the plaintiffs—I conclude that the City left open reasonable alternative avenues for presenting and consuming erotic dance entertainment.

The plaintiffs also contend that the tavern and tavern-amusement ordinances granted City officials "unbridled discretion" to determine whether to grant or deny such licenses. "Unbridled discretion" is a phrase that derives from prior-restraint cases involving censorship, see Southworth v. Bd. of Regents, 307 F.3d 566, 575-78 (7th Cir. 2002) (discussing history of unbridled discretion), but it has been applied in cases in which the prior restraint is analyzed as a time, place, or manner restriction, see Thomas v. Chicago Park Dist., 534 U.S. 316, 323, 122 S. Ct. 775, 151 L. Ed. 2d 783 (2002). However, in either kind of case, the concern behind the unbridled-discretion standard is censorship—a risk that the licensing authority will use its unduly broad discretion to favor or disfavor speech based on content. *Id.* The standard is usually applied in circumstances where the law at issue either explicitly involves censorship, such as the law governing the Maryland board of censors at issue in Freedman v. Maryland, 380 U.S. 51, 85 S. Ct. 734, 13 L. Ed. 2d 649 (1965), [*25] or when the law at issue presents a significant censorship risk, such as when a single person is granted power over a newspaper's ability to sell papers, see City of Lakewood v. Plain Dealer Pub'g Co., 486 U.S. 750, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988), or a single person is granted power to decide whether a group will be allowed to hold a rally in a public park, see Thomas, 534 U.S. at 323-24.

⁸ The plaintiffs have not argued that they have a right to offer erotic dance entertainment in the downtown area, as opposed to other areas within the city limits. Moreover, as I have already [*24] noted, "[c]ountless cases allow municipalities to zone strip joints, adult book stores, and like erotic sites out of residential and the classier commercial areas of the city or town." Blue Canary, 251 F.3d at 1124.

In the present case, the tavern and tavern-amusement licensing requirements did not explicitly involve censorship, and they did not present a significant censorship risk. As discussed, the purpose of the licensing requirements was not censorship but to ensure that a proposed form of tavern entertainment was basically compatible with the neighborhood in which it planned to locate. Moreover, it is difficult to envision a realistic scenario in which the Licenses Committee could have used its licensing power to favor or disfavor specific forms of expressive tavern entertainment. As the Seventh Circuit recognized in Blue Canary, the City of Milwaukee is a major city rather than a small town with a homogenous population that is likely to find certain forms of tavern expression offensive and to want to ban them from the City. 251 F.3d at 1124. [*26] Thus, there was never any realistic chance that the Licenses Committee would have used its licensing authority to facilitate a campaign to ban rock music, erotic dancing, or any other form of entertainment from the City's taverns. It is also important to take note of the procedural elements of the licensing ordinances, which required the Licenses Committee to hold a public hearing and make its recommendation to the Common Council in writing. See Milwaukee Code of Ordinances § 90-35-4-c; Stip. Facts ¶¶ 25-40, ECF No. 44. If the City's residents had found a particular form of tavern entertainment offensive and opposed [*952] a license application for that reason, and the Licenses Committee had recommended denial of the application for the same reason, those events would have been out in the open and could have been remedied through an as-applied challenge. This is in contrast to unbridled-discretion cases like City of Lakewood, in which the decisionmaker could have rendered an as-applied challenge ineffective by denying a license without holding a hearing or identifying the evidence on which he or she relied. 486 U.S. at 769. Thus, in the present case, the tavern and

tavern-amusement ordinances [*27] were not invalid on the ground that they vested decisionmakers with unbridled discretion.

The plaintiffs also argue that the tavern and tavern-amusement ordinances do not satisfy United States v. O'Brien, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968). In that case, the Supreme Court held that a content-neutral regulation that has an incidental effect on expression satisfies the First Amendment if it meets a four-pronged test: "[1] if it is within the constitutional power of the Government; [2] if it furthers an important or substantial governmental interest; [3] if the governmental interest is unrelated to the suppression of free expression; and [4] if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." Id. at 377. Plaintiffs argue that the tavern and tavern-amusement ordinances did not satisfy the first prong of the O'Brien test—that the ordinances be "within the constitutional power of the Government"—and they give two reasons in support of this argument: (1) the ordinances were contrary to Chapter 125 of the Wisconsin Statutes, which relates to alcoholic beverages, and (2) the ordinances were de facto zoning regulations that [*28] were not passed pursuant to the state-law procedures that apply to zoning regulations. In making these arguments, the plaintiffs assume that O'Brien's first prong allows a court to examine whether a municipality complied with state law when passing the regulation at issue. However, I can find no authority that supports this assumption. O'Brien's first prong is rarely discussed, but there is no indication that it was meant to "constitutionalize" matters of state law.⁹ Rather, when courts apply O'Brien's first prong to a municipal regulation, they ask only whether the regulation at issue is of a kind that is within the "general police powers" of a municipality. See

⁹ Plaintiffs cite various cases in which courts reviewed municipal ordinances for compliance with state laws, but in none of those cases did the court purport to be applying the O'Brien test. Instead, it appears that the courts were adjudicating state-law claims. See, e.g., Ravenna Road Mgmt. v. City of Twinsburg, 450 F. Supp. 2d 782, 785-86 (N.D. Ohio 2006); Northshore Experience, Inc. v. City of Duluth, 442 F. Supp. 2d 713, 718-19 (D. Minn. 2006); Fifth Column v. Vill. of Valley View, 100 F. Supp. 2d 493, 507 (N.D. Ohio 1998); S. Entm't Co. of Florida v. City of Boynton Beach, 736 F. Supp. 1094, 1101-02 (S.D. Fla. 1990); City of Ann Arbor v. Danish News Co., 139 Mich. App. 218, 361 N.W.2d 772, 774-76 (Mich. Ct. App. 1984).

Ben's Bar, Inc. v. Vill. of Somerset, 316 F.3d 702, 722-23 (7th Cir. 2003). In the present case, there is no question that regulating the locations of taverns and the time, place and manner of tavern entertainment is within the general police powers of a municipality. *Id.* at 722 (holding that a municipality's "regulation of alcohol sales and consumption in 'inappropriate locations' is clearly within its general police powers"); *Blue Canary*, 251 F.3d at 1124. To the extent plaintiffs believe that the City failed to comply [**29] with state law when passing the specific ordinances at issue, they may have a claim against the City under state law. However, in the present case, the plaintiffs have brought [**53] no state-law claims and proceed only under 42 U.S.C. § 1983. See Fourth Amended and Supplemental Complaint ¶ 101, ECF No. 36. Thus, these matters of state law are not subject to review in this case.

Finally, Six Star argues that the City's decision to deny its license applications was "discriminatory" because the [**30] City ultimately granted tavern and tavern-amusement licenses for the Old World Third premises to another applicant, Robert Smith. Six Star contends that the only difference between its proposal and Smith's proposal was that Smith did not propose to offer erotic entertainment. That appears to be true, but as discussed, the City was allowed to base its decision on "the character of the entertainment" that Six Star intended to present and whether such entertainment was compatible with the normal activity of the neighborhood. *Blue Canary*, 251 F.3d at 1123. Here, the decision to permit Smith's tavern but exclude Six Star's gentlemen's club is explainable by the fact that the presence of an ordinary tavern in the neighborhood would not have deterred respectable retailers from moving in, whereas the presence of a gentlemen's club would have. Thus, the City's having granted tavern and tavern-amusement licenses for the Old World Third premises to a different applicant does not show that the decision to deny Six Star's applications for the same licenses was based on impermissible factors.

Accordingly, the City's motion for summary judgment on plaintiffs' claims involving the tavern and tavern-amusement [**31] ordinances will be granted.

B. Theater Ordinance

Former § 83-1-2 of the Milwaukee Code of Ordinances stated that "[n]o person, firm or corporation . . . shall keep, maintain, conduct or operate for gain or profit, any theater or moving picture house in the city without first obtaining a license therefore." Section 83-1-1-b defined "theater" as "any edifice, or parts thereof, used for the purposes of dramatic or operatic or other exhibitions, plays or performances for admission to which remuneration or any other consideration is paid, charged or received." Section 83-1-5-b stated that an application for a theater license "shall be granted when the following requirements are met: the building, structure or premises for which the license is sought must conform in all respects to the provisions of this section and to the law of this state and the ordinances of the city applying to such buildings, structures, or premises."

In September 2011, Six Star applied for a license to operate the Old World Third location as a theater called the Outer Limits Gentlemen's Club. The theater would have offered erotic dance entertainment but no alcohol. It is undisputed that, pursuant to a "hold" placed [**32] on Six Star's application by Alderman Bauman, no decision was ever made on Six Star's application. The theater ordinance was repealed effective March 1, 2012.

The plaintiffs claim that former Chapter 83 was unconstitutional on its face and was unconstitutionally applied to Six Star. I begin with Six Star's as-applied challenge, which hinges on the fact that the City dragged its heels and never reached any decision on the licensing application before repealing the theater ordinance.¹⁰ Numerous cases recognize that a licensing or permitting scheme that touches upon expression violates the *First* [**954] Amendment when it allows the government to unreasonably

¹⁰ The City argues that Six Star's claim against Chapter 83 is moot because that ordinance has been repealed. However, Six Star seeks damages for the period in which Chapter 83 prevented it from operating the Outer

delay or postpone a decision on whether to grant or deny a license. See, e.g., City of Lakewood, 486 U.S. at 771; Freedman, 380 U.S. at 57-58; Vodak v. City of Chicago, 639 F.3d 738, 749 (7th Cir. 2011); Thomas, 227 F.3d at 927-28. Here, the theater ordinance was a regulation governing the time, place, or manner of expressive activity—namely, "dramatic or operatic or other exhibitions, plays or performances," § 83-1-1-b. Thus, to defeat Six Star's as-applied challenge, the City must offer a legitimate explanation for its failure to render [*33] a prompt decision on Six Star's application to engage in such expressive activity at the Old World Third location.

The City's primary argument is that Six Star applied for the wrong kind of license. It contends that, in September 2011, the license required for offering erotic dance entertainment in an establishment that does not serve alcohol was the public entertainment club license required by Milwaukee Code of Ordinances § 108-5-1-a (2010). However, even if that were true, it would not have justified the City's failure to render a decision on Six Star's application. If the City believed that Six Star had applied for the wrong license, it should have denied the application on that ground. Then, if Six Star thought it had applied for the correct license, it could have challenged the City's decision [*34] in an appropriate legal action.

In any event, the facts in the record do not establish that Six Star applied for the wrong type of license. The public entertainment club ordinance required any person who wanted to offer "public entertainment" to obtain an

appropriate license or permit. Milwaukee Code of Ordinances § 108-5-1-a (2010). "Public entertainment" was defined as "any entertainment of any nature or description to which the public generally may gain admission, whether with or without the payment of a fee." Id. § 108-3-3. This definition included plays and other forms of entertainment that fell within the scope of the theater ordinance. However, one did not need both a theater license and a public entertainment club license to offer the kind of entertainment that fell within the scope of the theater ordinance. This was so because the public entertainment club ordinance stated that the holder of a theater license did not need to obtain a public entertainment club license. Id. § 108-5-2-c. Moreover, nothing in either ordinance indicated that an establishment that wanted to offer erotic dance entertainment could not have operated under a theater license instead of a public entertainment [*35] club license.¹¹ The repealed ordinances allowed Six Star to choose which type of license it wanted, and it chose to apply for a theater license. Accordingly, the City could not have denied Six Star's application for a theater license on the ground that Six Star should have applied for a public entertainment club license instead.¹²

[*955] Accordingly, because the City has offered no legitimate explanation for its failure to render a prompt decision on Six Star's application for a theater license, plaintiffs' motion for summary judgment on the issue of whether the theater ordinance was unconstitutionally applied to it will be granted. This result eliminates the need to address Six Star's facial challenge to the repealed ordinance.

Limits Gentleman's Club as a theater, and so its claim is not moot. See Buckhannon Bd. and Care Home, Inc. v. W. Va. Dep't of Health and Human Res., 532 U.S. 598, 608-09, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001).

¹¹ The City points out that, in 2010, the only establishments that held theater licenses under Chapter 83 were "traditional, commonly-defined theaters featuring fixed seating facing a permanent stage offering dramatic performances, plays and the like." See Pl's Resp. to City's PFOF ¶ 6, ECF No. 72. However, that fact is irrelevant, since there was nothing in Chapter 83 that required an establishment to conform to this description in order to obtain a theater license.

¹² The City also points out that, at the time Six Star applied for a theater license, Robert Smith was already operating his tavern at the Old World Third location. However, the City does not explain why that mattered. See City's Response Br. at 48-49, ECF No. 55. Apparently, Six Star had an agreement with Smith under which Smith would vacate the premises if Six Star had been able to obtain a license [*36] to operate as either a tavern or a theater. Nothing in Chapter 83 suggests that the City needed to know this in order to process Six Star's application for a theater license.

There is still the matter of Ferol's facial challenge to the theater ordinance. Ferol never applied for a license under Chapter 83. However, Ferol contends that because the theater ordinance was a prior restraint, it has standing to challenge the ordinance and to obtain damages. As a general matter, it is true that a plaintiff can bring a facial challenge to an allegedly unconstitutional licensing regulation without applying for a license. See *City of Lakewood*, 486 U.S. at 755-56. However, in the present case, the ordinance has been repealed, and Ferol's Article III standing depends on its having sustained damages as a result [*37] of Chapter 83's existence. Yet, the summary-judgment record contains no affidavit or other evidence indicating that Ferol had concrete plans to open a dry gentlemen's club (as opposed to a tavern) at the Pittsburgh Avenue location or any other location in the City of Milwaukee during the time that Chapter 83 was in force. Thus, I do not see how Ferol could have been damaged by the mere existence of Chapter 83, and so I am not satisfied that Ferol has standing to challenge Chapter 83 on its face. See *Summers v. Earth Island Inst.*, 555 U.S. 488, 499, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009) ("it is well established that the court has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties"). Therefore, I will not adjudicate Ferol's facial challenge to Chapter 83 on the merits at this time. However, should Ferol believe that it can establish Article III standing, it may submit appropriate affidavits to that effect and I will reconsider this ruling.

C. Public Entertainment Club Ordinance

The remaining claims are the plaintiffs' facial challenges to the former public entertainment club ordinance, which appeared in Chapter 108 of the Milwaukee Code of Ordinances. [*38] As already discussed in the context of plaintiffs' claims involving the theater ordinance, Chapter 108 provided that no person could offer any form of public entertainment without obtaining either a public entertainment club license or a theater license. Having ruled that Six Star is entitled to damages in connection with its as-applied challenge to the theater ordinance, I do not need to separately consider Six Star's facial challenge to the public entertainment club ordinance, as

both claims involve the same pool of damages—namely, damages attributable to Six Star's inability to offer erotic dance entertainment without also serving alcohol at the Old World Third location. Moreover, because the record contains no affidavits or other evidence indicating that Ferol had any concrete plans to offer erotic dance entertainment without also serving alcohol at the Pittsburgh Avenue location or any other location during the time that the public entertainment club license was in force, I am not satisfied that Ferol has Article III standing to bring a facial challenge to the public entertainment club ordinance. See *Summers*, 555 U.S. at 499. Accordingly, I do not need [*956] to reach the merits of plaintiffs' [*39] facial challenges to Chapter 108 at this time. Again, if Ferol believes that it can establish Article III standing, it may submit appropriate affidavits and I will reconsider this ruling.

III. CONCLUSION

For the reasons states, **IT IS ORDERED** that plaintiffs' motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**, and that defendant's motion for summary judgment is **GRANTED IN PART** and **DENIED IN PART**. Summary judgment is granted to the City on plaintiffs' claims involving the tavern and tavern-amusement ordinances. Summary judgment is granted to Six Star on the issue of the City's liability for damages relating to Six Star's inability to offer erotic dance entertainment without also serving alcohol at the Old World Third location. I do not reach the merits of Ferol's claims involving the theater ordinance and the public entertainment club ordinance. If Ferol believes that it can prove that it suffered damages that are traceable to those ordinances, then it may attempt to do so during further proceedings.

IT IS FURTHER ORDERED that the parties' motions to file briefs that exceed the page limitations [ECF Nos. 48 & 54] are **GRANTED**.

FINALLY, IT IS ORDERED that an in-person status [*40] conference will be held on **April 11, 2013 at 10:30 a.m.** to discuss further proceedings.

Dated at Milwaukee, Wisconsin, this 18th day of March 2013.

/s/ Lynn Adelman

District Judge

LYNN ADELMAN

WAM DC LLC
c/o Mr. Stephen L. Chernof
Godfrey & Kahn, S.C.
780 North Water Street
Milwaukee, WI 53202

July 7, 2015

DELIVERED BY MESSENGER

The Honorable Anthony Zielinski, Chair
Members of the Licenses Committee
Common Council of the City of Milwaukee
200 East Wells St., Rm. 205
Milwaukee, WI 53202

RE: Boardman Entertainment Mke, LLC

Dear Alderman Zielinski and Members of the Licenses Committee:

This letter is an objection by WAM DC LLC ("WAM") to the application of Boardroom Entertainment Mke, LLC ("Boardroom") to permit "adult entertainment/strippers/exotic dance" at 730 North Old World Third Street (the "Property"). WAM is an entity formed to spearhead the redevelopment of West Wisconsin Avenue from the river to Marquette, and is an outgrowth of an initiative proposed by Mayor Tom Barrett. Our constituents include major stakeholders in the area—people who are deeply committed to making our City in general, and our downtown in particular, an even better place.

WAM's goal is to revitalize the area by attracting residents in new housing, creating welcoming public spaces, locating significant new retail businesses along Wisconsin Avenue, and making sure that the public understands that West Wisconsin Avenue is safe and inviting. We have begun to see the fruits of our efforts with hundreds of new housing units under construction or planned on Wisconsin Avenue or in the immediate vicinity.

We believe that permitting adult entertainment/strippers/exotic dancer just off Wisconsin Avenue will significantly harm our efforts, would be incompatible with the revitalization effort and will be inconsistent with Milwaukee's Downtown Plan. It will send a strong signal to families that they are not welcome as residents or visitors, and it will do nothing to foster daytime commercial activity. It would not be in the best interests of the City, the residents of the area or the new businesses we hope to bring to the revitalization effort.

We respectfully request that the Licenses Committee deny Boardroom's application.

Respectfully submitted,

WAM DC LLC



Stephen L. Chernof

cc: Honorable Mayor Tom Barrett
Honorable Members of the Milwaukee Common Council
Office of the City Clerk-License Division
Commissioner Rocky Marcoux, Department of City Development

13939225.1

REDACTED RECORD

July 7, 2015

Honorable T. Anthony Zielinski, Chair and
Members of the Licenses Committee
City of Milwaukee, Common Council
200 E. Wells Street
Milwaukee, WI 53202

RE: Application of Robert F. Smith, agent for Boardroom Entertainment Mke, LLC - requesting to add
"...Adult Entertainment/Strippers/Erotic Dance"

Dear Chair Zielinski and Members of the Licenses Committee:

This letter is written to strongly encourage you to deny adding Adult Entertainment/Strippers/Erotic Dance to the Entertainment Premises License submitted by Robert F. Smith, Agt. Boardroom Entertainment Mke, LLC for Rusty's Old 50 at the premises located at 730 N. Old World Third Street.

has invested over \$60 million in real estate projects that are within one block of the proposed location to add adult entertainment/strippers/erotic dance.

these properties has
visibility to this establishment.

along with the investment of others such as the city of Milwaukee, Westtown Association, WAM DC, NEWaukee, and several real estate developers, to revitalize Westtown and West Wisconsin Avenue would be undermined by adding the proposed use to this establishment at this location. We do not oppose adult entertainment, strippers and/or exotic dance in itself, but we feel such uses should be located in an entertainment district. Adding this use to a downtown area that is already challenged with issues such as homelessness, panhandling and loitering will not be beneficial to the overall community. It is our belief that the requested uses at this particular premise will negatively impact rental income and consequently property values, make it more difficult to attract and retain quality office and retail tenants and encourage young professionals to live, work and play in this area.

Again, we request that you deny adding Adult Entertainment/Strippers/Erotic Dance to the Entertainment Premises License at 730 N Old World Third Street because it does not benefit the health, safety and welfare of the public and our neighborhood.

Sincerely,



Friday, September 11, 2015



Notice of Public Hearing

BUZDUM, Dusanka, Agent

Rusty's Old 50 at 730 N Old World Third St

Class B Tavern and Public Entertainment Licenses Transfer - Change of Agent, and Requesting to Add Dancing by Performers, Comedy Acts, 11 Concerts, Patrons Dancing, Jukebox, and Adult Entertainment/Strippers/Erotic Dancing

Thursday, September 17, 2015 at 1:00 PM

To whom it may concern:

The above application has been made by the above named applicant(s). This requires approval from the Licenses Committee and the Common Council of the City of Milwaukee. The hearing before the Licenses Committee will take place on 9/17/2015 at 1:00 PM, in Room 301-B, Third Floor, City Hall. If you wish, you may provide testimony at the hearing regarding the request; see below for further information. You are not required to attend the hearing. Once the Licenses Committee makes its recommendation, this recommendation is forwarded to the full Common Council for approval at its next regularly scheduled hearing. Please review the information below and if you have further questions regarding this process, please contact the License Division at (414) 286-2238.

Important details for those wishing to provide information for the Licenses Committee to consider when making its recommendation:

1. The license application is scheduled to be heard at the above time. Due to other hearings running longer than scheduled, you may have to wait some time to provide your testimony.
2. You must appear in person and testify as to matters that you have personally experienced or seen. (You cannot provide testimony for your neighbor, parent or anyone else; this is considered hearsay and cannot be considered by the committee.)
3. No letters or petitions can be accepted by the committee (unless the person who wrote the letter or the persons who signed the petition are present at the committee hearing and willing to testify).
4. Persons opposed to the license application are given the opportunity to testify first; supporters may testify after the opponents have finished.
5. When you are called to testify, you will be sworn in and asked to give your name, and address. (If your first and/or last names are uncommon please spell them.)
6. You may then provide testimony.
 - a. Include only information relating to the above license application.
 - b. Include only information you have personally witnessed or seen.
 - c. Provide concise and relevant information detailing how this business has affected or may affect the peaceful enjoyment of your neighborhood.
 - d. If by the time you have the opportunity to testify, the information you wish to share has already been provided to the committee, you may state that you agree with the previous testimony. Redundant or repetitive testimony will not assist the committee in making its recommendation.
7. After giving your testimony, the members of the Licenses Committee and the licensee may ask questions regarding the testimony you have given or other factors relating to the license application.
8. Business Competition is not a valid basis for denial or non-renewal of a license.

Please Note: If you have submitted an objection to the above application your objection cannot be considered by the committee unless you personally testify at the hearing.

[illegible]

[illegible]

CURRENT RESIDENT	734 N OLD WORLD 3RD ST 25	MILWAUKEE, WI 53203-2209
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 26	MILWAUKEE, WI 53203-2209
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 30	MILWAUKEE, WI 53203-2209
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 31	MILWAUKEE, WI 53203-2209
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 32	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 33	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 34	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 35	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 36	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 37	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 38	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 39	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 40	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 41	MILWAUKEE, WI 53203-2208
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 42	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 43	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 44	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 45	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 46	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 47	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 48	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 49	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 50	MILWAUKEE, WI 53203-2207
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 51	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 52	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 53	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 54	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 55	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 56	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 57	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 58	MILWAUKEE, WI 53203-2210
CURRENT RESIDENT	734 N OLD WORLD 3RD ST 59	MILWAUKEE, WI 53203-2210

Total Records: 144

Radius: 250.0 feet and Center of Circle: 730 N Old World Third ST



PUBLIC ENTERTAINMENT PREMISES CHANGE OF ENTERTAINMENT APPLICATION

Office of the City Clerk License Division
200 E. Wells St. Room 105, Milwaukee, WI 53202
(414) 286-2238 www.milwaukee.gov/license
e-mail address: license@milwaukee.gov

(1) BUSINESS INFORMATION

Licensee (Name of individual; each partner; or agent, if a corporation or LLC): <u>DUSANKA SUZDUN</u>		Aldermanic District: <u>4th</u>
Corporation or LLC Name (if applicable): <u>BOARD ROOM ENTERTAINMENT</u>	Business Name: <u>Rusty's Old 50</u>	
Business Address (include Zip Code): <u>730 Old World Third Street</u>		
Optional Mailing Address:	Business Telephone Number: <u>262-343-1272</u>	

(2) TYPES OF ENTERTAINMENT BEING REQUESTED (CHOOSE ALL THAT APPLY)

<input type="checkbox"/> Amusement Machines – How many? _____	<input checked="" type="checkbox"/> Concerts Approx. # per year? <u>1</u>	<input type="checkbox"/> Bowling Alley How many? _____	<input type="checkbox"/> Pool Tables How many? _____
<input type="checkbox"/> Motion Pictures How many? _____	<input type="checkbox"/> Theatrical Performances Approx. # per year? _____	<input checked="" type="checkbox"/> Jukebox	<input type="checkbox"/> Poetry Readings
<input checked="" type="checkbox"/> Karaoke	<input checked="" type="checkbox"/> Patrons Dancing	<input checked="" type="checkbox"/> Disc Jockey	<input type="checkbox"/> Instrumental Musicians
<input checked="" type="checkbox"/> Dancing by Performers	<input checked="" type="checkbox"/> Bands	<input type="checkbox"/> Patron Contests	<input type="checkbox"/> Wrestling
<input checked="" type="checkbox"/> Comedy Acts	<input type="checkbox"/> Battle of the Bands	<input type="checkbox"/> Magic Shows	<input checked="" type="checkbox"/> Adult Entertainment/ Strippers/Erotic Dance
<input type="checkbox"/> Other: _____			

No changes in entertainment shall take place until a new license has been issued and posted on the premises.

(3) NOTARIZED SIGNATURES OF APPLICANTS

I, (we), the undersigned have a knowledge of the City Ordinances currently regulating these licenses and being duly sworn under oath, depose and say that I am (we are) the person (s) and that all statements made in the foregoing application are true and correct.

SUBSCRIBED AND SWORN TO BEFORE ME

This 29 day of April, 20 15

(Clerk/Notary Public)

My Commission Expires 2/16/2019

Agent/Owner/Partner

Additional Owner/Partner

Office Use Only:

Current Entertainment:

Changes Being Requested:

Queued to: ☒ IMPD

☒ DNS (if adding entertainment)

Bands, DJ, Karaoke, 2 games, 1 pool

Add Dancing by performers, comedy acts,

11 concerts, patrons dancing,
jukebox, Adult ent/strippers/
Erotic Dance

Initials: QU Filed: 4/28/15 App #: 208896 Granted: _____ Issued: _____ (no fee)



APPLICATION AMENDMENT

OFFICE OF THE CITY CLERK LICENSE DIVISION
200 E. WELLS ST. ROOM 105, MILWAUKEE, WI 53202
(414) 286-2238 EMAIL: LICENSE@MILWAUKEE.GOV

Date: 5/19/2015

To the License Division of the City of Milwaukee:

I, Robert Smith, wish to amend my answer(s) on the application for a
(full legal name)

public entertainment
(type of license)

license 730 Old World Third Street

(premise address, if applicable)

by adding or amending the following information (complete only those sections being amended):

1. Answer to Question(s) # _____ should be: _____
2. Agent should be (full legal name): Robert F. Smith Also complete 3, 4, 5 & 6
3. Date of birth should be: _____
4. Home address should be (include city/state/zip): _____
5. Home phone number should be (include area code): _____
6. Driver's License Number/State ID Number should be: _____
7. Corporation/LLC name should be (full legal name): _____
8. Business name should be: _____
9. Business address should be (include city/state/zip): _____
10. Business phone number should be (include area code): _____
11. Premises address should be: _____
12. Location where vehicle will be parked should be (include city/state/zip): _____
13. Age Distinction should be (for Class B Taverns only): _____
14. Other: _____

Subscribed and sworn to before me
this 19 day of May 2015

Robert P. For

Notary Public - State of Wisconsin

My Commission expires Permanently

Notary Seal must be affixed

s/ Robert Smith

Signature of Sole Proprietor, Partner, Agent
or 20% or more Shareholder

Office Use Only:

Application #: 206890

Date Received/Entered: 5-19-15

Initials: JK

Date LC Advised LIU: _____

NS: _____

Health: _____

Initials: _____