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Via Email Only (rleonh@milwaukee.gov)

Office of the City Clerk

City Clerk Ronald D. Leonhardt

City Hall

200 East Wells Street, Room 205

Milwaukee, WI 53202

Re: Lady Bug Club, LLC – 622 N. Water Street
Objections

Dear City Clerk Leonhardt,

Our office is Counsel to Lady Bug Club, LLC (“Ladybug”). On November 17, 2009, the Licenses Committee met to consider the renewal of the Class B Tavern and Tavern Amusement (Cabaret / Nite Club) licenses for Ladybug and its agent, Habib Manjee. The Committee voted to recommend that Ladybug’s license be renewed, but with a 20-day suspension based upon incidents recounted in the police report and neighborhood objections.

This letter serves as my client’s written objection to the “Findings of Fact and Conclusions of Law” and recommendation of the Licenses Committee (“Committee”). The specific objections are as follows:

1. The Committee has failed to adopt Findings of Fact and Conclusions of Law as required by § 125.12(2)(b)(3), Wis. Stats., and § 90-11-2-c2, Milwaukee Code of Ordinances.

Paragraph 5 of the “Findings of Fact” (contained on page 2), states that “Based upon the sworn testimony heard and the evidence received at the hearing, the **Committee finds the following**” [emphasis added]. Ladybug objects to this statement, as the Committee has never adopted these findings. Because the Findings of Fact and Conclusions of Law were never adopted by the Committee, it would be more properly characterized as the City Attorney’s proposed Findings of Fact and Conclusions of Law.

2. Due Process, as guaranteed under both the United States Constitution and Wisconsin Constitution, requires that the City of Milwaukee prove the allegations made in the police report prior to those allegations being accepted as fact by the Committee.

The Findings of Fact and Conclusions of Law incorporate the entire police report. The police report, as read to the Committee on the day of the hearing, is quadruple hearsay and contains numerous inaccuracies. Item 5(I) describes an alleged battery incident and included statements which Habib Manjee allegedly made to MPD that a “private promoter... was insisting on letting people in.” As Manjee explained, under oath, at the hearing, he never made such statements to the MPD. Nicholas Merado, Director of Operations for Ladybug further testified that Ladybug does not allow promoters to make decisions about who should be let in to the facility. Item 5(Q) describes a shooting incident that occurred on August 1, 2009 approximately two blocks from Ladybug. The Findings of Fact and the police synopsis state that the shooting victim was at the Ladybug. This is wholly incorrect and the shooting victim, Brandon Robins, appeared at the Licenses Committee hearing and testified that he was never at Ladybug that night. Despite the recitation of incidents in the synopsis and an officer presence at the hearing, MPD failed to prove anything about any of the incidents enumerated in the synopsis. Yet the incidents identified in the synopsis have been incorporated into the Findings of Fact and Conclusions of Law despite the inaccuracies specifically identified *supra* and the other inaccuracies proclaimed at the hearing.

Once the police synopsis was proven to be unreliable, as specifically identified above with the promoter and shooting incidents, the normal hearsay exception contained in § 908.03, Wis. Stats., does not apply. *See also Gehin v. Wisconsin Group Insurance Board*, 2005 WI 16. Additionally, City of Milwaukee Ordinance (“CMO”) 90-11-2-a-2-c and 2-d require that Ladybug be allowed to cross examine witnesses in opposition to renewal. The only way for the MPD to cure the hearsay issue once the synopsis is proven unreliable is to present testimony as to first-hand knowledge of the events. The failure of the Licenses Committee to prevent the police synopsis from being admitted and the lack of any cross-examination of police officers (they weren’t there) about the specific events contained in the synopsis results in the Licenses Committee having failed to act according to law.

Furthermore, based upon the concluding remarks of Aldermen Kovac and Hamilton, it is clear that the Findings of Fact and Conclusions of Law did not reflect their actual findings. Alderman Hamilton explained that he and the rest of the Committee do not assume that all of the items contained in the police report are correct, but evaluate the incidents and decide what weight to give each item. He stated that he felt Ladybug had taken steps to correct previous problems at the club, and had specifically followed and implemented the directives of the Committee at the previous renewal hearing. Alderman Hamilton explained that his motion for suspension was based upon his conclusion that Ladybug had not been proactive, or had not taken enough steps to deal with the problems arising in the parking lot. He stated no other reason for his motion. Alderman Hamilton’s conclusions are not reflected in the Findings at all and there is no indication that any weighing of the evidence took place in light of the fact that the police report

is repeated verbatim. Alderman Kovac asserted it was Ladybug's use of police services which was the basis for his conclusion that suspension was warranted. He explained that the incidents requiring police intervention appeared to occur outside the club. Alderman Kovac specifically noted that the most serious incident which occurred during the license period was a shooting, in which the individual who was shot was never in the club. In direct contradiction to Alderman Kovac's conclusion, the Findings state that the shooting victim was a patron of Ladybug.

Because the Findings of Fact and Conclusions of Law do not accurately reflect the Committee's findings and the proof brought forward at the hearing, by presenting this report to the full Council as its Findings, the Committee is transmitting false or misleading information. Ladybug's interest in the renewal of its license is a constitutionally protected property right. *Tavern League of Wisc. v. Madison*, 131 Wis.2d 477, 489 (Ct. App. 1986). An intentional manipulation of information which results in the deprivation of a constitutionally protected property right has been clearly established as a violation of substantive due process rights. *Hearn v. City of Gainesville*, 688 F.2d 1328 (11th Cir. 1983) (discussed by *Penterman v. WEPCO*, 211 Wis.2d 458, 472 (1997)).

In violation of Ladybug's right to Due Process, the Committee placed the burden of proof on Ladybug to disprove that the incidents recounted in the police synopsis were true, or not related to Ladybug, yet the City was permitted to put its case for non-renewal to the Committee first. The allegations of the MPD were taken as fact without any evidence being put forth by the MPD to prove the content of its report as it relates to Ladybug.

3. Paragraph 2 of the Conclusions of Law asserts that another basis for the Committee's recommendation was neighborhood objections. The Findings of Fact demonstrates that the Committee erroneously gave undue weight to the negative testimony of four "neighbors", as compared to the positive testimony provided by the *numerous* patrons, neighbors, employees, and neighboring business owners who testified in support of Ladybug. The substance of three of the neighbors' testimony was that there was unrest in the privately owned and managed parking lots where, allegedly, many of the Ladybug customers park. A fourth "neighbor" owns property next to the Ladybug, lives in Hales Corners, and admitted to having no first-hand knowledge of any of the activities at Ladybug whatsoever. When counsel for Ladybug attempted to cross-examine the neighbors regarding their objections to renewal and the specific instances about which they were complaining, Committee Chair Bohl did not allow him to do so. Alderman Bohl barred counsel from questioning the witnesses about issues which the witnesses themselves raised in the hearing, thereby denying Ladybug the right to cross-examine those appearing in opposition to its renewal as required by CMO §§ 90-11-2-a-2-c and 2-d. This was a violation of Ladybug's procedural due process rights. *Polenz v. Parratt*, 83 F.2d 551, 557(7th Cir. 1989).

4. At the end of the November 17, 2009 hearing, Alderman Kovac discussed the renewal hearing of Pizza Shuttle which occurred in January 2009. Pizza Shuttle is an establishment located in the 3rd Aldermanic District which Alderman Kovac represents. Even though the Pizza Shuttle police report was horrendous, Alderman Kovac justified a warning letter rather than a suspension based upon the police incidents occurring over a couple of months. In reality, the incidents occurred over a nine-month period spanning from February through October 2008. Attached to this letter is a copy of Pizza Shuttle's police report.

The City of Milwaukee and MPD's treatment of Pizza Shuttle at its license renewal hearing held almost one year ago, demonstrates that Ladybug's Equal Protection rights as guaranteed under the United States Constitution were violated.

Pizza Shuttle's police report contained a total of 26 items, including 25 from 2008. In addition, Pizza Shuttle's CADS reports, obtained through the MPD, show that there were approximately 100 police calls related to the establishment between November 2007 and January 2009. There are numerous incidents in the Pizza Shuttle report that presented valid cause for concern. For example, the report recounted numerous fight complaints, numerous issues with guns, complaints of loud music from cars, cars being used to block traffic, disorderly patrons, and drugs. In fact, incident No. 24 on Pizza Shuttle's police report required the MPD to be on scene for almost two hours, involved multiple fights and also involved hundreds of patrons who were spectators and encouraged the fighting.

In spite of this *extensive* police report, neither the MPD, nor the City Attorney's Office appeared at the hearing to oppose the license renewal. In stark contrast to the Committee's handling of Ladybug's renewal, Pizza Shuttle was renewed with only a warning letter. This disparate treatment of the two establishments finds no support in the hearing record, and is clearly a violation of Ladybug's rights of Equal Protection under the law.

In addition, in his concluding remarks, Alderman Kovac indicated that the weight given to an establishment's use of police services varies by "context" even though this assertion has no foundation in statute or code. The Alderman stated that considerable use of police services by clubs on the north end of Water Street is difficult because the clubs' patrons are all mixed together once they get outside, and venues like the Bradley Center and Miller Park is acceptable and good for the City of Milwaukee. Alderman Kovac further explained that Ladybug, which is at the south end of Water Street, is held to a different standard for determining whether its use of police services is excessive. The Alderman emphasized that this should not be interpreted as a double standard even though it may seem to be. He explained that the determination that Ladybug should be treated differently is the result of a "complicated" process, but did not elaborate as to what this process is.

The only difference between Ladybug and other establishments on Water Street is its location on the south end of the street, and the fact that its patrons are mostly African American. The fact that Ladybug is subject to this unknown “complicated” process based upon “context” while other similarly situated establishments are not, is a violation of Ladybug’s right to equal protection. *See Penterman*, 211 Wis. 2d at 485 and *Esmail v. Macrane*, 53 F.3d 176, 180 (7th Cir. 1995).

Ladybug was not provided proper notice of the possible reasons for non-renewal. CMO § 90-11-2 requires that applicants for renewal receive a notice of potential non-renewal including a statement of reasons upon which renewal could be denied. In this instance, Ladybug received a notice which specifically stated **“there is a possibility that your application may be denied for the following reasons:”**

Neighborhood objections to loitering, littering, loud music and noise, parking and traffic problems, drug and criminal activity, prostitution, trespassing, public urination, fights, vandalism, thefts, operation of the premises in such a manner that it creates a public nuisance, past history of licensed location, cruising, disorderly patrons during and after hours disrupting the neighborhood, damage to private property, disturbing the peace, causing normal flow of traffic on roadways to be impeded, excessive and inappropriate use of police resources, neighborhood problems due to mismanagement, endangering safety by exceeding capacity, shootings and gunshots, fireworks, harassment of neighbors by staff, and conduct which is detrimental to the health, safety, and welfare of the neighborhood.

Some of these potential reasons for non-renewal were addressed at the hearing in the MPD report or through neighbor testimony. However, some “reasons” listed in the notice, such as “prostitution,” and “exceeding capacity” had no foundation in the police report or neighbor complaints. Other reasons, such as “parking on private property” were simply impossible given the club’s location on Water Street. Therefore, the notice sent did not actually specify the reasons that Ladybug’s renewal application could be denied, but merely gave a laundry list of reasons upon which any renewal application could be denied. With this broad approach, the City failed to put Ladybug on actual notice of the potential reasons for non-renewal.

The notice sent to Ladybug was further deficient because it failed to state that the MPD and Alderman Bauman would appear in opposition to the renewal application. At the hearing the MPD stepped outside its neutral role as informant to the Committee and gave testimony in opposition to renewal. Alderman Bauman also strongly opposed renewal. He presented his opinion that Ladybug’s license should be denied, and even conducted cross-examination of witnesses

appearing in favor of renewal. Both the MPD and Alderman Bauman had well-prepared their presentations to the Committee, indicating that their opposition was not unplanned. Certainly this opposition was a potential reason for non-renewal, and according to CMO § 90-11-2, should have been stated in the notice. This failure to follow the requirements of CMO § 90-11-2, was a violation of Ladybug's procedural due process rights. *Polenz v. Parratt*, 83 F.2d 551, 557(7th Cir. 1989).

The deficient or improper notice also caused a violation of Ladybug's substantive due process rights. The portion of the notice as recited above was included in paragraph 3 of the Findings and Fact and Conclusions of Law transmitted to the full Council, as the actual factual conclusion of the Committee. No changes were made to conform to the proof submitted at the hearing, and yet it was presented to the Council as conclusively established reasons for suspending Ladybug's license. As explained, not all of these reasons were actual complaints brought against Ladybug. There was no evidence to support some of the assertions and at least one could not have occurred due to the club's location. By including all of the items listed in the notice as the reasons for the renewal hearing, the Committee provided incorrect or false information to the Council in violation of Ladybug's substantive due process rights. *Hearn v. City of Gainesville*, 688 F.2d 1328 (11th Cir. 1983) (discussed by *Penterman*, 211 Wis.2d 472 (1997)).

In summary, Ladybug objects to the Findings of Fact and Conclusions of Law. In violation of § 125.12(2)(b)(3), Wis. Stats., and § 90-11-2-c2, Milwaukee Code of Ordinances, the Licenses Committee has never adopted the Findings of Fact and Conclusions of Law. The reasons relied upon for the 20-day suspension are unjust and not substantiated by any reliable evidence. In violation of Ladybug's right to Due Process, the Licenses Committee accepted the police synopsis as fact without any credible substantiation by the MPD or City of Milwaukee, did not allow counsel to fully cross-examine witnesses in opposition to renewal, and failed to provide Ladybug with adequate notice of the reasons for potential non-renewal. The Committee also violated Ladybug's substantive due process rights by providing inaccurate or misleading information to the Common Council in the Findings of Fact and Conclusions of Law. Finally, Ladybug's right to Equal Protection was violated as evidenced by the undue weight given to the negative testimony of four witnesses compared to the *numerous* witnesses who testified in support of Ladybug's license renewal, by the contrasting disposition of Pizza Shuttle in its renewal hearing almost one year ago, and the Committee's declaration through Alderman Kovac that Ladybug's use of police services would be treated differently than other similarly situated clubs and venues.

Thank you for your attention to this matter.

Sincerely,



Michael S. Maistelman

Attorney at Law

Enc.

Cc: Habib Manjee
Members of the City of Milwaukee Common Council (via email w/enclosures)

MILWAUKEE POLICE DEPARTMENT
LICENSE INVESTIGATION UNIT

CRIMINAL RECORD/ORDINANCE VIOLATION/INCIDENTS
SYNOPSIS

DATE: 12/03/08
LICENSE TYPE: BTAVN
NEW:
RENEWAL: X

No. 15252
Application Date: 12/02/08
Expiration Date:

License Location: 1827 N Farwell Avenue
Business Name: Pizza Shuttle

Aldermanic District: 03

Licensee/Applicant: Gold, Mark H
(Last Name, First Name, MI)
Date of Birth: 01/08/63

Male:

Female:

Home Address: 915 W El Patio Lane
City: Mequon
Home Phone:

State: WI **Zip Code:** 53092

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

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

1. On 10/21/07 at 3:00 am, Milwaukee Police were dispatched to Farwell and Royall Streets for a Fight complaint. Investigation revealed a fight had occurred inside the Pizza Shuttle that continued onto the streets. As police arrived, the fight dispersed with the victim not wanting to prosecute the unknown subject who had struck him. While investigating the fight on the street, officers received another call from Pizza Shuttle regarding another fight. Officers responded and issued two citations to the patrons for Disorderly Conduct.

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2. On 02/10/08 at 3:13 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Squads responded and advised the incident.
3. On 02/20/08 at 3:00 am, Milwaukee police were dispatched to 1827 N Farwell for Trouble With A Subject. Police spoke to the manager Don who stated he was having trouble with a customer causing a disturbance. Squads responded and advised the incident.
4. On 02/24/08 at 2:12 am, Milwaukee police were dispatched to 1827 N Farwell for a Subject With Gun complaint. An employee Chad advised the telecommunicator that security for the restaurant had broken up a fight and that a subject was seen with a silver firearm by security personnel. An ambulance was also requested for a female patron who was trampled by the suspect as he fled the scene. Reports were filed regarding this incident.

5. On 03/02/08 at 2:27 am, Milwaukee police were dispatched to 1827 N Farwell for an Indecent Exposure complaint. Police spoke to security for Pizza Shuttle who stated they were detaining a male that had urinating on the building. The subject was cited for Disorderly Conduct and released.
6. On 03/15/08 at 1:13 am, Milwaukee police were dispatched to 1827 N Farwell for a loud music complaint. The caller stated subjects were playing loud music in the parking lot of Pizza Shuttle. Officers arrived and were unable to locate any subjects on the lot playing loud music.
7. 03/16/08 at 2:53 am, Milwaukee police were dispatched to 1827 N Farwell for a Trouble With Subject complaint. Officers spoke to an employee "Bill" who stated he had three armed security guards at the door of his restaurant and that several subjects outside this business were making gestures as if they were armed with guns. "Bill" stated these subjects also were saying that " There is going to trouble if they are not allowed into the restaurant." No gun was found on scene by any patron however one subject was cited for Trespassing.
8. On 03/20/08 at 2:36 am, Milwaukee police were dispatched to 1827 N Farwell for a Trouble With Subject complaint. Officers spoke to the manager "Bill" who stated three subjects were yelling and swearing at him refusing to leave. "Bill" also indicted that the subjects were intoxicated. The incident was advised.
9. On 03/27/08 at 12:46 am, Milwaukee police were dispatched to 1827 N Farwell regarding several calls about males in front of the restaurant that appeared as if they were about to drag race their autos. Calls were also received about several subjects in front of the Pizza Shuttle possibly arguing. The manager "Bill" also called police and stated that there were thirty autos blocking traffic and that subjects were running in the streets and playing music. Squads responded and the area was eventually cleared.
10. On 03/29/08 at 3:52 am, Milwaukee police were dispatched to 1827 N Farwell for Trouble With Subjects complaint. Investigation revealed a group of subjects were at the restaurant arguing and refusing to leave. Once police arrived all parties involved were gone.
11. On 03/30/08 at 2:06 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Police spoke to an employee, Sharin, as well as security who stated a large group had gathered and were fighting in the parking lot of the restaurant. The subjects involved were gone once police arrived.
12. On 04/05/08 at 1:28 am, Milwaukee police were dispatched to 1827 N Farwell for a Trouble With Subject complaint. The call was advised but police ended up writing parking citations for several parking violations found. Police were dispatched again at 4:23 am for subjects that refusing to leave the restaurant. Once police arrived, subjects were gone.
13. On 04/19/08 at 1:06 am, Milwaukee police were dispatched to 1827 N Farwell for Crowd Control at the restaurant. Security personnel requested MPD for a large crowd that gathered outside of the location. Police arrived and cleared the area.

14. On 05/04/08 at 3:32 am, Milwaukee police were dispatched to 1827 N Farwell for a Large Fight complaint. A security guard for the restaurant was injured and had sustained lacerations to the knee and elbow while trying to break up a fight. A report was filed.
15. On 06/23/08 at 1:02 am, Milwaukee police were dispatched to 1800 N Farwell for a Fight complaint. Police arrived and observed numerous subjects standing in and around the Pizza Shuttle restaurant as well as multiple autos stopped in traffic. Due to heavy pedestrian and vehicle traffic, more squads were dispatched to help assist clearing the area. Four traffic citations were issued and the area was eventually cleared.
16. On 05/17/08 at 3:38 am, Milwaukee police were dispatched to 1827 N Farwell Avenue for traffic control. When squads responded they did not locate any autos.
17. On 05/25/08 at 2:10 am, Milwaukee police were dispatched to 1827 N Farwell Avenue for a Trouble With Subject complaint. Police were advised that a patron was refusing to leave but upon officers arrival, the subject left. Squads were again dispatched to the restaurant at 2:39 am regarding a Fight In Progress in which security was detaining subjects. Citations were issued to the parties involved.
18. On 05/31/08 at 1:28 am, Milwaukee police were dispatched to 1827 N Farwell Avenue for a Fight complaint. Security was reporting that 300 plus people were at the location and that there was a fight. The caller stated they had only four security guards and needed more help. Updated calls were given to responding squads that indicated that a male was armed with a revolver. As police approached, they observed security has an auto stopped in the street at gunpoint. Police issued several citations and a report was filed regarding the subject who was armed and fled the restaurant.
19. On 06/01/08 at 1:53 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Investigation revealed people were fighting outside the restaurant and in the parking lot. A victim was identified but he refused to prosecute.
20. On 06/07/08 at 1:00 am, Milwaukee police were dispatched to 1827 N Farwell for reports of Shots Fired and Cruising. Squads responded and were not able to locate any suspects. Police were dispatched again at 2:05 am for a complaint of Battery- DV related. Investigation found security personnel used pepper spray on a suspect that was unrelated to the Battery DV complaint. Reports were filed. Police again were dispatched at 3:26 am, for another Battery complaint between two patrons and citations were issued in the incident.
21. 06/16/08 at 1:08 am, Milwaukee police were dispatched to 1827 N Farwell for a Loud Music complaint. Squads were advised that there were 20-30 subjects outside of the restaurant crowding the streets playing loud music and getting in and out of their cars. Squads responded and cleared the area. At 1:35 am, police were flagged down by an employee of Pizza Shuttle about patrons causing problems inside the restaurant. Police again responded and at the request of management, ordered everyone that was inside the restaurant to leave if they were not ordering food. It should be noted an underage party was held downtown that ended up with numerous patrons from that club going to Pizza Shuttle. On that particular night, the restaurant did not have security personnel on scene.

22. On 06/20/08, Milwaukee police were dispatched to 1827 N Farwell for a Trouble With Subject complaint. Police spoke to Christopher Albert, security for Pizza Shuttle who stated patrons who were intoxicated were refusing to leave the property. Albert stated these patrons were screaming profanities and police were called. Citations were issued to two patrons for Trespassing and one citation was issued for Obstructing An Officer.
23. On 06/17/08 at 1:40 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Police spoke to security who stated there was a verbal altercation in the parking lot between two females. When security approached these two women, one subject's boyfriend jumped in and became loud and disorderly to the security guards. Security asked these subjects to leave but they refused. One citation was issued for Disorderly Conduct.
24. On 07/06/08 at 1:12 am, Milwaukee police were dispatched to 1827 N Farwell for a Fight complaint. Investigation revealed a fight took place in the parking lot of Pizza Shuttle with approximately 200-300 people scattered though the waiting area of the restaurant. These patrons appeared to be spectators to the fight and were egging the participants on. A report for property damage was also taken. While on scene, police were advised of another fight inside the mens room of the restaurant. Both subjects involved in that were cited for Disorderly Conduct. While police were issuing citations for the fight, security again advised police of a verbal confrontation between other patrons in which security tried to break up but that both parties directed their anger at security. Officers advised these two subjects to leave or they would both receive citations. They left without incident. Police were on scene for 1 hour and 41 minutes. Police did speak with management regarding the volume of calls received by the restaurant and that no other businesses in the area have needed this type of police response.
25. On 07/07/08 at 1:00 am, Milwaukee police were dispatched to a Fight at 1827 N Farwell. Investigation revealed security was detaining four subjects who were observed in an auto parked in the parking lot of Pizza Shuttle with one actor being in possession of marijuana. Police arrested and charged one actor with Possession of Marijuana.
26. On 10/18/08 at 1:01 am, Milwaukee police were dispatched to 1827 N Farwell for A Trouble With Subject complaint. Police spoke to the manager William Kopatichi who stated a group of club juveniles entered his business causing a disturbance in and around the restaurant. Kopatichi stated the juveniles were trashing the dining room area while yelling obscenities and arguing outside of the restaurant so he called police. The subjects were gone upon police arrival. Police observed that no security was on scene of the business. Kopatichi stated that the owner cancelled security services and was in the process of contracting with a new company. No citations were issued regarding the incident.