

COMMITTEE ASSIGNMENTS

CHAIR

- Licenses Committee

VICE CHAIR

- Zoning, Neighborhoods and Development



MILELE A. COGGS
ALDERWOMAN, 6TH DISTRICT

MEMBER

- Finance and Personnel Committee
- Library Board
- Neighborhood Improvement Development Corporation Board
- Special Joint Committee on the Redevelopment of Abandoned and Foreclosed Homes
- Steering and Rules Committee
- Wisconsin Center District Board

November 19, 2020

To the Honorable, the Common Council

Dear Members:

Re: Common Council File Number 200912

Attached are written objections to file number 200912, Motion relating to the Food Dealer and Weights & Measures License Renewal Applications for Lonnie W McCaffety, agent for "Family Dollar Stores of Wisconsin LLC", for "Family Dollar #26182" at 930 N 27th St.:

Nonrenewal, based upon police, neighborhood, applicant, and aldermanic testimony of the Food Dealer and Weights & Measures licenses for Lonnie McCaffety for the premises located at 930 N 27th St. ("Family Dollar #26182") in the 4th aldermanic district.

This matter will be heard by the full Council at its Tuesday, November 24, 2020 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached statement and materials.

Respectfully,

A handwritten signature in black ink that reads "Milele A. Coggs".

Milele Coggs, Chair
Licenses Committee

cc: All Council Members
City Attorney's Office
Common Council/City Clerk – License Division
CCF 200912



November 18, 2020

VIA EMAIL ONLY (jowcza@milwaukee.gov)

Jim Owczarski, City Clerk
200 East Wells Street, Room 205
Milwaukee, Wisconsin 53202

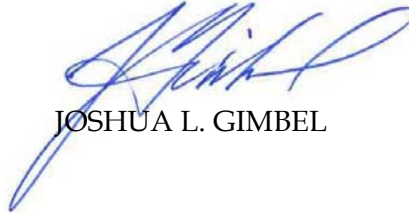
Re: Objection to License Committee Recommendation for Lonnie McCaffety

Dear Mr. Owczarski:

As counsel for Lonnie McCaffety and Family Dollar Stores of Wisconsin LLC, we submit the attached written response objecting to the report of the Licenses Committee which is being submitted in accordance with Deputy City Clerk Celella's letter of November 13, 2020.

Please confirm receipt at your earliest convenience.

Very truly yours,



JOSHUA L. GIMBEL

JLG/lkg
enclosure

cc: Molly Kuether-Steele (via email only) (molly.kuether-steele@milwaukee.gov)

In the matter of the Food Dealer and Weights & Measure Licenses of
Family Dollar Stores of Wisconsin LLC for the
Premises located at 930 North 27th Street in the City and County of Milwaukee

OBJECTIONS TO LICENSES COMMITTEE REPORT

This matter appears before the Common Council on remand from Milwaukee County Circuit Court, Branch 23, pursuant to a stipulation by the parties. In stipulating to a remanded hearing, the City of Milwaukee acknowledged that Lonnie McCaffety as agent for Family Dollar Stores of Wisconsin LLC (“Family Dollar”) was denied a full and fair hearing before the Licenses Committee on May 12, 2020, at least in part due to Family Dollar being expressly denied the right to cross examine witnesses. Following the May 12, 2020 hearing, the Common Council voted to nonrenew Family Dollar’s licenses by a vote of nine (9) to six (6), with Alders Kovac, Bauman, Dodd, Zamarripa, Murphy, Borkowski, Perez, Spiker, and Demitrijevic voting in favor of nonrenewal, and Alders Hamilton, Johnson, Coggs, Rainey, Stamper, and Lewis voting against.

Following the Common Council’s May 27, 2020 decision, Family Dollar filed a Petition for Writ of Certiorari and a motion for injunctive relief to enjoin the City of Milwaukee from effectively shutting down an essential business in the middle of a pandemic. On June 16, 2020, the Honorable Jeffrey Conen granted Family Dollar’s motion for injunctive relief, which stayed the Common Council’s decision to nonrenew Family Dollar’s licenses until after the issues asserted in the petition could be adjudicated by the court.

On October 8, 2020, the parties filed a stipulation for the matter to be remanded to the Licenses Committee solely to allow Family Dollar a full and fair hearing with the right to cross examine all witnesses. On October 20, 2020, the court ordered the remanded hearing. Pursuant to the court's order, "[r]egardless of the outcome of the hearing and decision of the common council . . . all of Family Dollar's arguments, other than the denial of cross-examination issue, shall be preserved should the parties not resolve the matter." The court further suspended the pending certiorari action until such time as the parties could advise the court as to whether the matter has been resolved. If the parties are unable to reach a resolution, then the court has allowed for any new issues involving the remanded hearing to be included in the ongoing litigation. Additionally, the court allowed for a continuation of its injunction until further order of the court.

On November 10, 2020, Family Dollar and Lonnie McCaffety, by its attorney Joshua L. Gimbel, Regional Manager Denelle Gordon, District Managers, Harry Susman and Mindy Yoho, and the manager of the this location, Kiara Pellis, appeared virtually before the Licenses Committee for the remanded hearing. At the conclusion of the remanded hearing, by a vote of four ayes and zero noes (Chairwoman Coggs was not present), the committee voted to recommend the licenses not be renewed for a second time. The Committee issued its Findings of Fact and Conclusions of Law which was received at our offices on November 17, 2020. Family Dollar objects to the Findings of Fact and Conclusions of Law, including the non-renewal recommendation, for the following reasons:

1. The store seeking renewal of its Food Dealer and Weights & Measures licenses is located at 930 North 27th Street.

2. At the May 12, 2020 hearing, Alderman Bauman, Borkowski, and Kovac as well as two members of the Near West Side Partners raised concerns about the store's turnover in management, the store's perceived lack of community involvement, the unavailability of the store's day to day manager at the hearing, and the alleged nuisance behavior around the store.

3. Over the past seven months, Family Dollar has undertaken efforts at the regional, local, and individual store levels to address the specific issues identified by the Alderman and the Near West Side Partners. At the beginning of the November 10, 2020 hearing, Alderman Bauman objected to Family Dollar presenting any evidence of these mitigating steps taken by Family Dollar since the May 12, 2020 hearing. The objection was overruled.

4. At the remanded hearing, Ms. Gordon testified that she has overseen the implementation of new initiatives to bring consistent standards across all stores in the Milwaukee area. She informed the Licenses Committee that this starts with hiring top talent for management positions. She said Family Dollar has utilized a recruiter to help identify top tier candidates, and she introduced the Licenses Committee to Kiara Pellis, the store's manager since April 2020. Ms. Gordon further explained how Family Dollar has changed its interviewing procedures so that every interviewee meets with the general manager, a recruiter, a member of the human resources team, an asset protection regional partner, and Ms. Gordon herself.

5. Ms. Gordon encouraged Alderman Bauman to visit the store and see the recent improvements Family Dollar has made. Additionally, Ms. Gordon explained that the store has been making strides to be more involved in the community. She discussed a meeting at the store with Mindy Yoho, Harry Susman and Keith Stanley of the Near West Side Partners where they discussed Mr. Stanley's concerns related to the store. She testified that Family Dollar has made donations to community groups over the summer and that it continues to seek opportunities to be more involved in the community.

6. Ms. Gordon concluded her testimony by discussing the important role this store plays in the community. As an essential business, the store provides food products and other necessities for the surrounding community. The store maintains 11 employees at a time when jobs are scarce. The majority of these employees live in the same neighborhood where the store is located.

7. Alderman Bauman was permitted to cross examine Ms. Gordon and focused his questions on the number of Family Dollar stores in Wisconsin, where Ms. Gordon lives, and the salary of Family Dollar's CEO.

8. Following Alderman Bauman's cross examination of Ms. Gordon, Mr. Susman testified that he has worked to coordinate efforts with the local community, health inspectors, and the Near West Side Partners. Mr. Susman acknowledged the concerns presented by the Alderman and the Near West Side Partners but explained that many of the issues identified were failures of previous leadership. He encouraged the

Licenses Committee to look at the steps Family Dollar has taken since new management has been in place.

9. Mr. Susman further testified that closing this store would create a huge inconvenience for the district's constituents. Mr. Susman explained that many of the store's customers either walk to the store or utilize the city's bus system. By closing the store, many of these individuals would be forced to incur unnecessary travel expenses only to pay more for their groceries and other necessities.

10. Ms. Yoho discussed the photographs she took of the store which were provided as part of the record for the Licenses Committee's review. Ms. Yoho explained that many of the nuisance related issues stem from a tavern located across the street from the store. The tavern opens at 5:30 a.m. and substantially contributes to many of the police calls to the area at all times of day. Ms. Yoho testified that Family Dollar has made repairs to the store specifically cited by the Near West Side Partners. Ms. Yoho also stated that the interior and exterior of the store looks the best it has in five years.

11. Alderman Bauman cross examined Ms. Yoho as to whether her or any other representative of Family Dollar had ever appeared to object to a renewal of the tavern's license.

12. Kiara Pellis presented testimony that she has been the manager almost six months and hired 9 of the 11 employees at the store. Ms. Pellis reiterated that all of the employees of the store live in the area of the store. Ms. Pellis further testified nuisance related issues are not caused by Family Dollar or its employees. Ms. Pellis informed the Licenses Committee that many of these issues come from neighboring businesses. Ms.

Pellis testified that she trains her employees on how to handle security issues within the store. Ms. Pellis also addressed the Near West Side Partners concerns about the interior of the store by explaining that she has repaired many of the issues identified. Ms. Pellis further stated that she receives daily compliments on how good the store looks.

13. At the remanded hearing, two members of the Near West Side Partners presented testimony in opposition to the renewal of Family Dollar's licenses. These members identified new concerns based on their observations that were not addressed at the original hearing. Also, representatives of the MPD testified about police calls.

14. Despite the considerable evidence presented by Family Dollar's representatives, Alderman Bauman testified there was no evidence in the record refuting the previous Findings of Fact and Conclusions of Law from the May 12, 2020 hearing. As he did in the May 12, 2020 hearing, Alderman Bauman advocated for his constituents to patronize a competitive business located across the street, Kilbourn Kitchen.

15. Alderman Bauman asserted it was not his obligation to visit or reach out to the store or its employees to see if any improvements had been made or to observe whether the store had taken steps to address his previous concerns. Alderman Bauman testified he had not been contacted by any representative of Family Dollar until 12 hours before the hearing. He claimed not to remember receiving a phone call from Family Dollar's counsel to discuss his specific concerns following the May 12, 2020 hearing.

16. Alderman Bauman further testified he would rather see the store boarded up than be allowed to continue operation. He did not provide any statistics to support his position that an abandoned building would be less likely to have continued nuisance

related issues. Alderman Bauman refused to agree with every other witness who presented testimony, including the members of the Near West Side Partners, that the store was important to the constituents in his district. Although Alderman Bauman has repeatedly claimed to have never been inside this Family Dollar, he asserted that Kilbourn Kitchen “absolutely” accepts the same public assistance items and sells substantially the same items as the store. Alderman Bauman’s testimony and cross examinations simply reiterated his anti-national chain store bias and not a basis to non-renew.

17. Alders Borkowski, Lewis, and Dodd expressed concerns about nonrenewing the licenses and explored alternative measures for addressing the issues raised by the Near West Side Partners and Alderman Bauman, including mandates to clean up the interior and exterior of the store. On the advice of the City Attorney and the chair, the Licenses Committee was instructed that the only options before the Licenses Committee were renewal, renewal with a warning letter, renewal with a 10 to 90 day suspension, or nonrenewal. Following a motion from Alderman Lewis, the Licenses Committee voted to nonrenew the store’s licenses.

18. It cannot be overstated that Family Dollar voluntarily stipulated to a remanded hearing with the understanding that the Licenses Committee would afford it a full and fair hearing as required by law. The employees of Family Dollar were excited to present evidence to the Licenses Committee detailing the steps the store had taken to address the specific concerns of the Alderman and the Near West Side Partners. Specifically, new management had engaged in community outreach, reduced employee

turnover, and made substantial improvements to the store. Unfortunately, this testimony was lost in an unnecessarily contentious hearing.

19. The contentiousness of the hearing prevented adequate consideration of the testimony presented, especially the testimony of Ms. Pellis, which demonstrated a previously lacking stability in the store's management. Most notably, Ms. Pellis explained that she and her 11 employees have taken ownership of the persistent problems with the store and that by doing so, she has observed other members in the community offering a helping hand.

20. Eliminating the police contact related activity that exists at the intersection of North 27th St. and West Kilbourn Avenue is not something that can be accomplished by Family Dollar alone in just a few months. It will take incremental improvements and strong leadership by all businesses and residents to accomplish this goal. Boarding up a building and forcing the closure of an essential business in the middle of a pandemic, which would result in 11 community members losing their jobs, is not the right approach.

21. Finally, the Licenses Committee's recommendation to non-renew flies in the face of the traditional notions of a free market. If the store is not an important asset to the community and the condition of the store is a detriment to the neighborhood as Alderman Bauman claims, then the market itself should correct these issues. It is the district's constituents that should hold the store accountable for any concerns. No one is forcing the members of the community to shop at Family Dollar and no one is preventing anyone from shopping at Kilbourn Kitchen. It seems inappropriate for the Common

Council to subvert market considerations based primarily on one Alderman's subjective animus toward national chain stores.

Family Dollar requests an opportunity to be heard at the Common Council meeting on November 24, 2020.

Dated this 18th day of November, 2020.

GIMBEL, REILLY, GUERIN & BROWN LLP

By: 

JOSHUA L. GIMBEL

State Bar No. 1007402

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Dollar Stores of Wisconsin LLC

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